United Nations A/HRC/33/51

General Assembly

Distr.: General
28 July 2016

Original: English

Human Rights Council
Thirty-third session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on Enforced or Involuntary Disappearances*

Note by the Secretariat

The Working Group on Enforced or Involuntary Disappearances was established by resolution 20 (XXXVI) of 29 February 1980 of the Commission on Human Rights. The mandate was most recently extended by the Human Rights Council in its resolution 27/1 of 25 September 2014.

The mandate of the Working Group is to assist families of disappeared persons to ascertain the fate and whereabouts of their disappeared relatives, to assist and monitor States' compliance with their obligations deriving from the Declaration on the Protection of All Persons from Enforced Disappearance and to provide States with assistance in the prevention and eradication of enforced disappearances.

Since its inception in 1980, the Working Group has transmitted a total of 55,273 cases to 107 States. The number of cases under active consideration stands at 44,159 in a total of 91 States. During the reporting period, 161 cases were clarified.

The present report reflects the activities of and communications and cases examined by the Working Group on Enforced or Involuntary Disappearances covering the period 16 May 2015 to 18 May 2016. It also includes a section with preliminary observations on the issue of enforced disappearances in the context of migration.

* The annexes to the present report are circulated as received, in the language of submission only.

GE.16-13019(E)

1613019

Please recycle

Report of the Working Group on Enforced or Involuntary Disappearances

Contents

		Page
I.	Introduction	3
II.	Activities of the Working Group on Enforced or Involuntary Disappearances: 16 May 2015 to 18 May 2016	3
	A. Activities	3
	B. Meetings	4
	C. Communications	4
	D. Country visits	5
	E. Follow-up reports and other procedures	6
	F. Press releases and statements	6
	G. Enforced disappearance in the context of migration	8
III.	Decisions on individual cases taken by the Working Group and communications transmitted to the States concerned during the reporting period	14
IV.	Observations	19
V.	Conclusions and recommendations	23

Annexes

I.	Country visit requests and invitations extended	26
II.	Statistical summary: cases of enforced or involuntary disappearance reported to the Working Group between 1980 and 2016, and general allegations transmitted	28
III.	Graphs showing the number of cases of enforced disappearances per year and per country according to the cases transmitted by the Working Group during the period 1980–18 May 2016 (only for countries with more than 100 cases transmitted)	33

I. Introduction

1. The Working Group on Enforced or Involuntary Disappearances was the first United Nations human rights thematic mechanism to be established with a universal mandate, by the Commission on Human Rights resolution 20 (XXXVI) of 29 February 1980. The mandate was most recently extended by the Human Rights Council in its resolution 27/1 of 25 September 2014.

2. The primary task of the Working Group is to assist families in determining the fate or whereabouts of their family members who are reportedly disappeared. In that humanitarian capacity, the Working Group serves as a channel of communication between family members of victims of enforced disappearance and other sources reporting cases of disappearances, and the Governments concerned.

3. Following the adoption by the General Assembly of its resolution 47/133 and of the Declaration on the Protection of All Persons from Enforced Disappearance, the Working Group was entrusted with monitoring the progress of States in fulfilling their obligations derived from the Declaration. The Human Rights Council, in its resolution 7/12, encouraged the Working Group to provide assistance in the implementation by States of the Declaration and of existing international rules.

4. The present report reflects the activities of and communications and cases examined by the Working Group covering the period from 16 May 2015 to 18 May 2016. A summary of the decisions on individual cases taken by the Working Group and communications transmitted to the States concerned during the reporting period is presented in a table (see sect. III).

5. Since its inception, the Working Group has transmitted a total of 55,273 cases to 107 States. The number of cases under active consideration that have not yet been clarified, closed or discontinued stands at 44,159 in a total of 91 States. During the reporting period, 161 cases were clarified.

II. Activities of the Working Group on Enforced or Involuntary Disappearances: 16 May 2015 to 18 May 2016

A. Activities

6. During the period under review, the Working Group held three sessions: the 107th session, from 14 to 18 September 2015; the 108th session, from 8 to 12 February 2016; and the 109th session, from 9 to 18 May 2016. The 108th session was held in Rabat and the other sessions were held in Geneva.

7. Post-sessional documents were adopted and published after the 107th (A/HRC/WGEID/107/1); 108th (A/HRC/WGEID/108/1); and 109th (A/HRC/WGEID/109/1) sessions. Those documents should be considered complements to the present annual report.

8. As from 18 September 2015, the Chair-Rapporteur of the Working Group has been Houria Es Slami. Bernard Duhaime was elected Vice-Chair during the 107th session of the Working Group. Osman El-Hajjé and Jasminka Dzumhur completed their appointments as members of the Working Group during the reporting period and were replaced by Tae-Ung Baik and Henrikas Mickevičius, respectively.

9. On 15 September 2015, former Chair-Rapporteur Ariel Dulitzky presented the annual report for the period 17 May 2014 to 15 May 2015, and its addenda, to the Human Rights Council at its thirtieth session, and participated in the interactive dialogue with Member States.

10. Between 8 and 12 June 2015, former Vice-Chair, Ms. Dzumhur, represented the Working Group during the twenty-second annual meeting of the special procedures of the Human Rights Council.

11. On 22 October 2015, the Vice-Chair, Mr. Duhaime, addressed the General Assembly at its seventieth session and participated in the interactive dialogue with Member States.

12. The Working Group continues its practice of having one of its sessions per year outside Geneva. The Working Group held its 108th session in Rabat from 8 to 12 February 2016. The Working Group is grateful to the Government of Morocco for that opportunity.

13. On 11 March 2016, the Chair-Rapporteur, Ms. Es-Slami, participated in a commemorative event for the tenth anniversary of the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance.

14. During the reporting period, all the members of the Working Group carried out a number of activities connected to enforced disappearances, which included their participation in conferences, consultations, seminars, training events, workshops and lectures, organized by Governments and/or civil society organizations.

15. The Working Group is thankful for the continuous support, including through voluntary contributions, provided by donor States, notably Argentina, France and Japan. It is also grateful for the support of the Moroccan National Council for Human Rights in the organization of an expert consultation on enforced disappearances and non-State actors on 7 February 2016 on the margins of the 108th session held in Rabat.

16. During the 109th session, the Working Group started discussing the development of guidelines relating to the handling and management of its archives.

B. Meetings

17. During the period under review, representatives of the Governments of Burundi (108th); Egypt (109th), Japan (107th, 108th and 109th); Maldives (109th), Morocco (108th), Pakistan (109th), the Sudan (109th) and Ukraine (107th and 109th) attended the sessions of the Working Group. A number of informal meetings were also held with representatives from various States. The Working Group expresses its appreciation to those Governments for the meetings and emphasizes the importance of cooperation and dialogue.

18. The Working Group also met with the Committee on Enforced Disappearances during its 107th session. It also met with State representatives from the Latin American and Western regional groups during the 107th and 109th sessions, respectively, as well as representatives of international governmental organizations, relatives and associations of relatives of disappeared persons, and non-governmental organizations. The Working Group also met the President of the Human Rights Council and the United Nations High Commissioner for Human Rights during the 109th session.

C. Communications

19. During the reporting period, the Working Group transmitted 766 new cases of enforced disappearance to 37 States.

20. The Working Group transmitted 483 of the above-mentioned cases under the urgent action procedure[1] to 20 States.

21. The Working Group clarified 161 cases, in 17 States. Of the 161 cases, 67 were clarified on the basis of information provided by Governments and 94 on the basis of information provided by sources.

22. The Working Group transmitted 12 prompt intervention communications addressing allegations of harassment of and/or threats to human rights defenders and relatives of disappeared persons in Bangladesh, the Central African Republic, China, Colombia, the Congo, Guatemala, India, Iraq, Mexico, Pakistan, Serbia and the Bolivarian Republic of Venezuela.

23. It transmitted two urgent appeals concerning persons who had been arrested, detained, abducted or otherwise deprived of their liberty or who had been forcibly disappeared or were at risk of disappearance in Ethiopia and Iraq.

24. The Working Group transmitted seven general allegations, related to obstacles to the implementation of the Declaration, to the Governments of Bangladesh, Cameroon, Colombia, Egypt, Kenya, Pakistan and Uruguay.

25. It also transmitted eight other letters addressing issues related to enforced disappearances to the Governments of the Democratic Republic of the Congo, the Gambia, Guatemala, Italy, Morocco, Pakistan, Portugal and the United States of America.

D. Country visits

26. The Working Group submits as addenda to the present report three country visits reports: on its visit to Peru, from 1 to 10 June 2015; to Sri Lanka, from 9 to 18 November 2015; and to Turkey, from 14 to 18 March 2016 (see A/HRC/33/51/Add.1, Add.2 and Add.3). The Working Group thanks the Governments of Peru, Sri Lanka and Turkey for the invitation, as well as for the cooperation extended to it before, during and after its visit to the countries. It encourages them to fully implement the recommendations contained in the country visit reports.

27. The Working Group also thanks the Government of South Sudan, which has extended an invitation to the Working Group to visit the country during the reporting period. The visit to South Sudan is scheduled to take place in the last quarter of 2016.

28. During the reporting period, the Working Group requested visits to Lebanon and Ukraine.

29. In addition to these new requests, the Working Group has requested in the past — and reiterated during the reporting period — a visit to the following countries, without having yet received a positive response: Bangladesh, Bahrain, Belarus, Burundi, China, Egypt, India, Indonesia, Kenya, Nepal, Nicaragua, the Philippines, the Russian Federation, Rwanda, South Africa, the Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia, the United Arab Emirates, Uzbekistan and Zimbabwe. The Working Group invites all States that have received a request for a visit by the Working Group to respond favourably to it, in accordance with Human Rights Council resolution 21/4.[2]

---

[1] Cases of enforced disappearances that occurred within three months prior to the receipt of a report by the Working Group.

[2] See annex I for country visit requests and invitations extended.

30. The Working Group recalls the fact that the Islamic Republic of Iran agreed to a visit by the Working Group in 2004, more than a decade ago, which was delayed at the request of the Government. The Working Group calls upon the Government to set the dates for the visit. Similarly, the Working Group regrets that the visit to Algeria did not materialize, in spite of an invitation extended to visit the country in the second half of 2014. The Government of the Sudan also expressed its openness to receiving the Working Group, although an official reply agreeing to the visit has not yet been received. The visit to Libya, postponed in May 2013 for security reasons, is still pending.

E. Follow-up reports and other procedures

31. The Working Group prepared follow-up reports on the implementation of recommendations made following its visits to the Congo and Pakistan. The follow-up reports are contained in an addendum to the present report (A/HRC/33/51/Add.4). The Working Group encourages both Governments to implement the outstanding recommendations.

F. Press releases and statements

32. On 10 June 2015, the Working Group issued a statement[3] and, on 11 June, a press release[4] at the end of its visit to Peru, emphasizing that, in spite of the Government's efforts, grave wounds remained open as a consequence of past enforced disappearances, in particular in the areas of truth, justice and rehabilitation programmes.

33. On 27 August 2015, the Working Group joined a press release issued by two United Nations experts on genocide prevention and transitional justice, calling on the Guatemalan judicial authorities to prevent any further attempt at interference, obstruction of justice or manipulation of the law while resuming the genocide trial against the former de facto Head of State José Efraín Ríos Montt and the former Chief of Intelligence of Guatemala José Mauricio Rodríguez Sánchez.[5]

34. On 28 August 2015, the Working Group issued a press release jointly with the Committee on Enforced Disappearances on the occasion of the International Day of the Victims of Enforced Disappearances, calling for global rules on immediately searching for the disappeared.[6] On the same day, the Working Group also issued a joint statement with the Inter-American Commission on Human Rights, recognizing the progress made on this issue in many countries in the Americas, while at the same time calling attention to the debt owed to the victims of forced disappearances of the past in terms of realizing their rights to truth, justice, and reparation.[7]

35. On 9 September 2015, the Working Group issued a press release, jointly with other special procedure mandate holders, welcoming the report of the independent team of experts of the Inter-American Commission on Human Rights on the enforced disappearances, executions and torture of students of Ayotzinapa in the State of Guerrero in

[3] See www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=16062&LangID=S.
[4] See www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=16065&LangID=S.
[5] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16351&LangID=E.
[6] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16356&LangID=E.
[7] See www.oas.org/en/iachr/media_center/PReleases/2015/098.asp.

Mexico in September 2014 and encouraging the Government of Mexico to implement all of its recommendations.[9]

36. On 18 September 2015, the Working Group issued a press release on the occasion of the presentation by the Vice-Chair of the annual report to the Human Rights Council. In the press release, the Working Group called on all States to inter alia assume the search of the disappeared as a priority, urging them to start by recognizing the issue and determining its exact extent through the gathering of clear and reliable records.[10]

37. On 22 October 2015, a press release was issued on the occasion of the presentation of the Chair-Rapporteur of the Working Group to the General Assembly, calling on States to put the eradication of enforced disappearance at the top of their agenda. It also urged Governments to address the changing nature of the problem due to new patterns of enforced disappearance, the growing activity of non-State actors and new types of victims.[11]

38. On 18 November 2015, the Working Group issued a press release[12] and a statement[13] upon the conclusion of its visit to Sri Lanka, highlighting that Sri Lanka has the opportunity to once and for all meet the rights and legitimate expectations of thousands of families of disappeared.

39. On 9 December 2015, the Working Group, jointly with all other special procedure mandate holders, renewed its commitment for the full implementation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, on the occasion of Human Rights Day.[14]

40. On 21 January 2016, the Working Group, jointly with other special procedure mandate holders, issued a press release calling on the Government of Ethiopia to halt the violent crackdown on Oromia protesters and ensure accountability for abuses.[15]

41. On 15 February 2016, the Working Group issued a statement and held a press conference at the conclusion of its 108th session in Rabat.[16]

42. On 26 February 2016, the Working Group, jointly with other special procedure mandate holders, issued a press release urging the Government of the United States of America to ensure proper investigation and full accountability for human rights violations in his plans to close the Guantanamo Bay detention camp.[17]

43. On 18 March 2016, the Working Group issued a press release[18] and a statement[19] upon conclusion of its visit to Turkey, emphasizing how it was high time for Turkey to come to terms with past enforced disappearances.

44. On 7 April 2016, the Working Group, jointly with other special procedure mandate holders, issued a press release welcoming the adoption by the African Commission on

[9] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16406&LangID=E.
[10] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16462&LangID=E.
[11] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16636&LangID=E.
[12] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16772&LangID=E.
[13] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16771&LangID=E.
[14] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16861&LangID=E.
[15] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16977&LangID=E.
[16] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17046&LangID=E.
[17] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17097&LangID=E.
[18] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18477&LangID=E.
[19] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18476&LangID=E.

Human and Peoples' Rights of the new Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa.[19]

45. On 26 April 2016, the Working Group, jointly with other special procedure mandate holders, issued a press release at the occasion of the final report by the Interdisciplinary Group of Independent Experts of the Inter-American Commission on Human Rights, emphasizing that much still needed to be done in Mexico to bring truth and justice in relation to the case of the of the 43 student teachers of Ayotzinapa, disappeared in September 2014.[20]

G. Enforced disappearance in the context of migration

46. The phenomenon of disappearances of migrating individuals in transit and in destination countries is increasingly being documented by States, non-governmental organizations and the media.

47. During its 105th session, and later in its 2015 annual report (see A/HRC/30/38, para. 96), the Working Group announced that it would address the issue of enforced disappearances in the context of migration. In the present document, the Working Group outlines the main issues surrounding the phenomenon of enforced disappearances of migrants, with the aim of further studying it over the course of the next reporting cycle, including through expert meetings and/or consultations with other relevant actors working on and interested in the issue.

48. The study will focus on enforced or involuntary disappearances of persons[21] in the context of migration. It will also examine other similar practices undertaken by private actors in the context of migration, including acts of human trafficking or smuggling of migrants, which could be tantamount to enforced or involuntary disappearances.[22]

49. While there is no universally recognized definition of the concept of migrant, the Working Group will refer to it as any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence.[23] Accordingly, for the purpose of the study, the Working Group will consider the term "migrants" as encompassing asylum seekers and refugees, as well as persons who migrate for economic, labour, climate or other reasons.[24]

50. In the short presentation of that theme in the present report, the Working Group briefly highlights the following issues, with the aim of further analysing them over the course of the coming months:

(a) Migration caused by enforced disappearances;

(b) Enforced disappearances of migrants;

[19] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19790&LangID=E.

[20] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19883&LangID=E.

[21] See preamble of the Declaration. See also International Convention for the Protection of All Persons from Enforced Disappearance.

[22] See article 3 of the Convention.

[23] See OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders (2014) chap. I, para. 10. Available from www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf. See also E/CN.4/2000/82, para. 36.

[24] See, for example, www.unhcr.org/en-us/mixed-migration.html. See also International Organization for Migration, *Glossary on Migration* (2014). Available from www.iomvienna.at/sites/default/files/IML_1_EN.pdf.

(c) Factors contributing to the enforced disappearance of migrants;

(d) State obligations in the context of the enforced disappearance of migrants.

(a) Migration caused by enforced disappearances

51. Throughout the fulfilment of its mandate, the Working Group has encountered numerous instances where persons have migrated to other countries in order to flee the threat of being subjected to enforced or involuntary disappearances. That has been the case for many individuals fleeing Argentina, Chile and other Latin American States commonly practising enforced disappearances in the 1970s and 1980s (see, for example, E/CN.4/1984/21, para. 102).

52. More recently, the Working Group has received cases and reports of refugees and other migrants who claim to have left their country of origin to avoid being subjected to enforced or involuntary disappearances, similar to those documented, for example, in the report of the Independent International Commission of Inquiry on the Syrian Arab Republic (see A/HRC/30/48 and Corr.1, paras. 23 and 65) or of the commission of inquiry on human rights in Eritrea (see A/HRC/32/CRP.1, paras. 97 and 277-279).

53. Similarly, individuals migrate due to the disappearances of their relatives or loved ones or to avoid reprisals due to their work in searching and pursuing justice. Additionally, there exist instances of human rights defenders who are forced to migrate due to their work fighting enforced disappearances.

(b) Enforced disappearances of migrants

54. The Working Group is also interested in examining further different types of enforced disappearances of migrants. While doing so, it will seek to address the distinction between instances of missing migrants and those of enforced disappearances of migrants.

(i) Enforced disappearances of migrants for political reasons

55. The study will analyse instances of enforced disappearances of foreign nationals in transit or who have migrated to other countries.

56. For example, in the framework of Operation Condor in the 1970s-1980s, many South American military regimes coordinated their actions, whereby States of origin seeking to capture certain of their nationals who had fled abroad to escape persecution provided intelligence to destination States so that the latter could locate and capture refugees and political migrants and deliver them to their State of origin. In certain instances, destination States also allowed agents from the State of origin to enter their territory and capture their nationals. In many such cases, captured refugees and migrants were the object of enforced or involuntary disappearances (see, for example, E/CN.4/1983/14, paras. 91-92).[25]

57. More recently, the Working Group has received information regarding several cases of defectors, who had fled to neighboring States to avoid persecution, and who were later captured there by host State officials, then handed over to the State of origin's authorities. After these forced repatriations many were reportedly subjected to enforced disappearances.[26]

---

[25] See also *Gelman v. Uruguay*, Merits and Reparations, Inter-American Court of Human Rights, Series C No. 221 (24 February 2011).

[26] Similar instances were reported in the report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea (A/HRC/25/CRP.1), paras. 446 and 452-453.

(ii) Disappearances occurring during the detention of migrants[27] or the execution of deportation procedures

58. The study will also take into consideration instances where migrants disappear while they are detained or during the execution of deportation procedures. Indeed, migrants who are captured in a transit or destination State, and detained under administrative or criminal proceedings, may sometimes disappear. This could be in part be due to the lack of transparency or to the secrecy of such detention, and the very limited access to the justice system that migrants often have in this context.[28] The Group will address how disappearances can occur in such contexts, as well as during the execution of deportations.

59. Similarly, many cases were reported where migrants were deported to their State of origin or another State, where they face enforced or involuntary disappearances or where they risk being subjected to that practice, in contravention of the international law principle of non-refoulement.[29] In that process, it has been observed that formal deportation procedures, including the assessment of risk of persecution in the country of origin, are sometimes not duly respected and, as a result, migrants are not registered and are unable to lodge asylum claims.

(iii) Enforced disappearances of migrants by private actors acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the State

60. There have been a number of reported cases of disappearances of migrants while they transit in a third State or upon arrival in the State of destination (see CED/C/MEX/CO/1, paras. 23-24).[30] In some instances, migrants are arrested and detained by State agents (migration officers or security forces) and later disappeared. In other instances, captured migrants are delivered by State agents to private actors, often members of organized criminal groups and, as such, are also the object of enforced disappearances, often trapped in trafficking networks for the purpose of economic or sexual exploitation.

(c) Factors that contribute to the enforced disappearances of migrants

61. The Working Group will analyse in greater detail factors that contribute to enforced disappearances of migrants, including them being exposed to greater situations of vulnerability and to multiple forms of discrimination and the impact of State migratory and security policies, as well as the existence of obstacles in the search for justice and truth regarding such human rights violations.

(i) Vulnerability and discrimination

62. The Working Group highlighted the particular vulnerability of migrants to enforced disappearances in past reports, in particular due to obstacles facing the judicial protection of their rights, as well as the irregular nature of their migration status (see A/HRC/19/58/Add.2, para. 69).

63. Some migrants enter irregularly and are thus not recorded, and others enter in a regular manner but remain unaccounted for because of the lack of procedures established at the borders of many countries. That is exacerbated by the lack of effective laws and protection programmes, as well as ineffective judicial remedies available to them (see

[27] See A/HRC/20/24.

[28] See, similarly, Inter-American Commission on Human Rights, "Human Rights of migrants and other persons in the context of human mobility in Mexico", OEA/Ser.L/V/II Doc48/13 (2013), p. 42.

[29] See art. 8 of the Declaration.

[30] See also A/HRC/33/53/Add.1, para. 14.

A/HRC/19/58/Add.2, para. 69). In addition, the routes taken by most undocumented migrants are often dangerous.

64. The Working Group will also enquire as to how enforced disappearances may result from the greater vulnerability experienced by migrants stemming from the fact that they are "invisible" to some extent (those who enter in an irregular manner are not recorded, while many of those who enter in a regular manner often remain unaccounted for).[31]

65. Finally, migrants are often the object of multiple forms of discrimination based on grounds such as their race, national origin, language, religion, gender, age, sexual orientation etc. Those multiple forms of discrimination may accumulate or intersect to constitute a unique and distinct form of discrimination, or intersectional discrimination (see, for example, E/CN.4/2005/85).

66. The study will thus assess to what extent those factors can specifically increase risks of migrants being subjected to enforced disappearances.

(ii) State migratory and counter-terrorism policies

67. Many States' migration policies adopted in the last decades, as well as the militarization of borders, have led to an expansion of trafficking and smuggling of migrants. In order to avoid the restrictive measures adopted by the States, many migrants choose clandestine and less safe roads, which are not surveilled by State authorities and are often controlled by illegal groups with the cooperation or acquiescence of State agents. The discourse and language used to address the issue of migration and, in particular, to qualify migrants, notably those with irregular status — often associating them with security threats and criminality — places them in a situation of increased vulnerability, thus exposing them further to violence and to becoming victims of human rights violations (see, for example, A/HRC/20/24, paras. 8 and 13).[32] The Working Group will analyse if and how those policies contribute to the specific phenomenon of enforced disappearances of migrants.

(iii) Obstacles in the search for the truth and justice

68. The transnational nature of migration certainly complicates the efforts of the families of migrants who wish to obtain information concerning a disappeared relative. In many instances, it is reported that there is no established protocol for family members to denounce a disappearance abroad, in the country where the crime occurred. Similarly, there are no forensic data banks to register DNA for the disappeared or evidence contributing to the research of remains. If such mechanisms exist, they are often said to be ineffective, not ensuring that family members living abroad may access them.

69. In addition to those problems, the Working Group will also examine broader obstacles that may complicate the search for the truth, such as language and cultural barriers, lack of cooperation from the country of origin, corruption, lack of financial means, the impossibility of travelling to the country where the disappearance occurred, the lack of access to effective legal services etc.

---

[31] See Council of Europe, "Missing persons and victims of enforced disappearance in Europe", Issue Paper (March 2016), p. 23. Available at https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper(2016)1&Language=lanEnglish&direct=true. See also Council of Europe, "The human rights of irregular migrants in Europe", Issue Paper (December 2007), p. 7. Available at https://wcd.coe.int/ViewDoc.jsp?p=&id=1237553&direct=true.

[32] See also OEA/Ser.L/V/II.Doc48/13, p. 42.

(d) State obligations in the context of the enforced disappearance of migrants

70. The Working Group also aims at addressing in greater detail some of the obligations that States bear under international law to prevent and remedy enforced disappearances of migrants.

(i) Prevention of enforced disappearance of migrants

71. States have an obligation to adopt effective legislative, administrative, judicial and other measures, including migratory policy-related measures, in order to prevent and terminate acts of enforced disappearances of migrants in their territory.[13] All acts of enforced disappearances shall also be offences under criminal law punishable by appropriate penalties, which shall take into account their extreme seriousness.[14]

72. No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance[15] and States must ensure that orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited. Accordingly, States must ensure that no pretext, such as a migratory crisis, can justify acts of enforced disappearances, including disappearances of migrants.

73. Other preventive measures need to be specifically tailored to address factors that increase the risk of disappearances of migrants, such as by ensuring language services in migratory processes, ensuring better control of dangerous routes, investigating, prosecuting and sanctioning organized criminal organizations who abuse migrants etc.

(ii) Detention of migrants and deportation procedures

74. Migrants deprived of liberty must be held in an officially recognized place of detention and their detention must be formally registered, including with accurate information on their detention and place or places of detention.[16] An official up-to-date register of all migrants deprived of their liberty shall be maintained in every place of detention. Those provisions are equally applicable to all migrants irrespective of the regularity of their migratory status. The Working Group will assess the scope of that obligation in the light of the different contexts of capture and detention of migrants, as well as the particular nature and cause of the detention.

75. Similarly, all deportation of migrants must be formally documented and undertaken in accordance with the law in order to avoid disappearances during those processes, including temporary disappearances. Accordingly, all migrants deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability to exercise fully their rights are assured.[17]

76. Migrant detainees should also be allowed to communicate with their loved ones and representatives, and should be informed of their right to communicate with the consular authorities of their country of origin.[18]

---

[13] See art. 3 of the Declaration.

[14] See art. 4 of the Declaration.

[15] See arts. 6 and 7 of the Declaration.

[16] See art. 10 of the Declaration.

[17] See art. 11 of the Declaration.

[18] See art. 17 (2) (d) of the International Convention for the Protection of All Persons from Enforced Disappearance and art. 16 (7) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

77. Refugees and other migrants may not be deported to States where they risk being subjected to enforced or involuntary disappearances or other forms of persecution.[40]

(viii) Remedies for migrant victims of enforced disappearances and their families

78. States must ensure a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of migrants deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty, in order to prevent enforced disappearances.[41]

79. The Declaration provides, among other things, the right to an adequate remedy, requiring States to conduct a thorough and impartial investigation, including initiatives to search for individuals, as well as localization, respect and restitution in case of death. It is of the utmost importance that States prevent remains from being moved to common graves or simply displaced, as such measures can derail the investigations.

80. It is also essential, that each State — origin, transit and destination — takes the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearances of migrants in accordance with the applicable principles of international law.[42]

[40] See art. 8 of the Declaration.
[41] See also art. 9 of the Declaration.
[42] See art. 9 of the Convention.

III. Decisions on individual cases taken by the Working Group and communications transmitted to the States concerned during the reporting period[42]

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by		Number of cases of possible clarification by Government, but not yet three-month rule	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Source			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
Afghanistan	3	-	-	-	-	-	3	-	-	-	-	-	-	-	-
Albania	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Algeria[43]	3 104	-	37	-	-	-	3 139	-	-	-	-	-	-	-	-
Angola	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Argentina[44]	3 271	1	-	-	26	-	3 244	-	-	-	-	-	-	-	-
Bahrain	3	2	-	-	1	-	4	-	-	-	-	-	-	-	-
Bangladesh	30	1	4	-	1	-	34	1	-	1	-	-	-	-	-
Belarus	3	-	-	-	-	-	3	-	-	-	-	-	-	-	-
Bhutan	5	-	-	-	-	-	5	-	-	-	-	-	-	-	-
Bolivia (Plurinational State of)	28	-	-	-	-	-	28	-	-	-	-	-	-	-	-
Brazil	13	-	-	-	-	-	13	-	-	-	-	-	-	-	-
Burundi	52	1	-	-	-	-	53	-	-	-	-	-	-	-	-
Cambodia	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-

[42] Urgent actions are cases of enforced disappearances occurred within three months prior to the receipt of a report by the Working Group, or cases of enforced disappearances occurred prior to the three-month limit, but within one year prior to the receipt of a report by the Working Group, provided that there is a link with a case that occurred within the three-month period. Standard cases are cases of enforced disappearances occurred prior to the three-month limit. Prompt intervention letters concern cases of intimidation, persecution or reprisal against families of disappeared persons, witnesses, lawyers, human rights defenders and other individuals concerned with disappearances. Urgent appeals concern allegations of enforced disappearances, or allegations regarding persons deprived of liberty who are at risk of being disappeared. General allegations concern alleged obstacles encountered in the implementation of the Declaration.

[43] The Working Group determined during its 109th session that two cases were duplicates and subsequently expunged them from the records.

[44] The Working Group determined during its 107th and 109th session that two cases were duplicates and subsequently expunged them from the records.

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by			Number of cases of possible clarification by Government (6 month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources (6 month rule)				Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
Cameroon	14	-	-	-	-	-	14	-	-	1	-	-	-	-	-	
Central African Republic	3	-	-	-	-	-	3	1	-	-	-	-	-	-	-	
Chad	23	-	-	-	-	-	23	-	-	-	-	-	-	-	-	
Chile	786	-	-	2	-	-	784	-	-	-	-	-	-	-	-	
China	40	6	-	1	4	1	41	1	-	-	-	-	-	-	-	
Colombia	971	1	1	-	-	-	973	1	-	1	-	-	-	1	-	
Congo	89	-	-	-	-	-	89	1	-	-	-	-	-	-	-	
Democratic People's Republic of Korea	53	-	41	-	-	-	94	-	-	-	-	-	-	-	-	
Democratic Republic of the Congo	47	-	-	-	-	-	47	-	1	-	1	-	-	-	1	
Dominican Republic	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-	
Ecuador	5	-	-	-	-	-	5	-	-	-	-	-	-	-	-	
Egypt	124	131	21	36	14	27	226	-	-	1	-	-	-	-	-	
El Salvador	2 280	-	2	-	-	-	2 282	-	-	-	-	1	-	1	-	
Equatorial Guinea	8	-	-	-	-	-	8	-	-	-	-	-	-	-	-	
Eritrea	56	-	6	-	-	-	62	-	1	-	-	-	-	-	-	
Ethiopia	112	-	-	-	-	-	112	-	1	-	-	-	-	-	-	
France	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-	
Gambia[45]	7	-	1	-	4	-	4	-	-	-	-	1	-	-	-	
Greece	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-	
Guatemala	2 897	-	-	-	-	-	2 897	1	-	-	-	1	-	-	-	

[45] The Working Group decided at its 107th session to transmit one case from Senegal to the Gambia.

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by		Number of cases of possible clarification by Government	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources (6-month rule)			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
Guinea	37	-	-	-	-	-	37	-	-	-	-	-	-	-	-
Guyana		-	1	-	-	-	1	-	-	-	-	-	-	-	-
Haiti	38	-	-	-	-	-	38	-	-	-	-	-	-	-	-
Honduras	130	-	-	-	-	-	130	-	-	-	-	-	-	-	-
India	354	-	-	-	-	-	354	1	-	-	-	-	-	-	-
Indonesia	163	1	-	-	1	-	163	-	-	-	-	-	-	-	-
Iran (Islamic Republic of Iran)	522	-	3	1	-	-	524	-	-	-	-	1	-	-	-
Iraq	16 408	-	5	-	-	-	16 413	1	1	-	-	-	-	-	-
Israel	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Italy	-	-	-	-	-	-	-	-	-	-	1	-	-	-	1
Jordan	3	2	-	-	1	-	4	-	-	-	-	-	-	-	-
Kenya	61	1	10	-	-	-	72	-	-	1	-	-	-	-	-
Kuwait	1	1	-	-	-	-	2	-	-	-	-	-	-	-	-
Lao People's Democratic Republic	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Lebanon	313	-	-	-	-	-	313	-	-	-	-	-	-	-	-
Libya	10	1	7	-	-	-	18	-	-	-	-	-	-	-	-
Maldives	-	-	1	-	-	-	1	-	-	-	-	-	-	-	-
Mauritania	4	-	-	-	-	-	4	-	-	-	-	-	-	-	-
Mexico	366	1	12	-	1	-	378	1	-	-	-	2	-	-	-
Morocco[a]	86	1	11	-	1	-	96	-	-	-	1	-	-	-	-
Mozambique	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Myanmar	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-

[a] The Working Group determined during its 109th session that one case was a duplicate and subsequently expunged it from the records.

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by		Number of cases of possible clarification by Government (6-month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources (if)			Prompt intervention letter	Urgent appeal	General allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to general allegation	Response to other letter
Namibia	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Nepal	459	-	2	-	-	-	461	-	-	-	-	-	-	-	-
Nicaragua	103	-	-	-	-	-	103	-	-	-	-	-	-	-	-
Oman	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Pakistan[47]	200	321	37	14	32	1	511	1	-	1	1	-	-	-	-
Peru	2 365	-	-	-	-	-	2 365	-	-	-	-	-	-	-	-
Philippines	625	-	-	-	-	-	625	-	-	-	-	-	-	-	-
Portugal	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-
Republic of Korea	-	-	3	-	-	-	3	-	-	-	-	-	-	-	-
Russian Federation	476	-	4	-	-	-	480	-	-	-	-	-	-	-	-
Rwanda	22	1	-	-	-	-	23	-	-	-	-	-	-	-	-
Saudi Arabia	5	-	-	-	-	-	5	-	-	-	-	-	-	-	-
Senegal[48]	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Serbia	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-
Seychelles	3	-	-	-	-	-	3	-	-	-	-	-	-	-	-
Somalia	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
South Africa	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
South Sudan	1	1	-	-	-	-	2	-	-	-	-	-	-	-	-
Spain	6	-	1	-	-	-	7	-	-	-	-	-	-	-	1
Sri Lanka[49]	5 750	-	16	7	-	-	5 758	-	-	-	-	-	-	-	-
Sudan	173	1	-	-	-	-	174	-	-	-	-	-	-	-	-
Syrian Arab Republic[50]	130	2	49	-	1	-	179	-	-	-	-	-	-	-	-

[47] The Working Group determined during its 107th session that one case was a duplicate and subsequently expunged it from the records.

[48] The Working Group decided at its 107th session to transmit one case from Senegal to the Gambia.

[49] The Working Group determined during its 109th session that one case was a duplicate and subsequently expunged it from the records.

Countries	Number of outstanding cases at the beginning of the period under review	Cases transmitted to the Government during the reporting period		Cases clarified during the period under review by		Number of cases of possible clarification by Government (6-month rule)	Number of outstanding cases at the end of the period under review	Communications sent during the period under review				Communications received during the period under review			
		Urgent actions	Standard cases	Government	Sources			Prompt intervention letter	Urgent appeal	Concise allegation	Other letter	Response to prompt intervention letter	Response to urgent appeal	Response to concise allegation	Response to other letter
Tajikistan	3	-	-	-	-	-	3	-	-	-	-	-	-	-	-
Thailand	82	-		-	-	-	82	-	-	-	-	-	-	-	-
Timor-Leste	428	-	-	-	-	-	428	-	-	-	-	-	-	-	-
Togo	10	-	-	-	-	-	10	-	-	-	-	-	-	-	-
Tunisia	2	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Turkey	79	-	-	1	-	2	78		-	-		-	-	-	-
Turkmenistan	3	-	-	-	-	-	3	-	-	-	-	-	-	-	-
Uganda	15	-	-	-	-	-	15	-	-	-	-	-	-	-	-
Ukraine	5	-	1	-	-	-	6	-	-	-	-	-	1	-	-
United Arab Emirates	16	6	-	5	7	1	10	-	-	-		-	-	-	-
United States of America	-	-	4	-	-	-	4	-	-	-	1	-	-	-	-
Uruguay	17	-	-	-	-	-	17	-	-	1	-	-	-	1	-
Uzbekistan	7	-	-	-	-	-	7	-	-	-	-	-	-	-	-
Venezuela (Bolivarian Republic of)	12	-	3	-	-	-	15	1	-	-	-	-	-	-	-
Viet Nam	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Yemen	11	-	-	-	-	-	11		-	-	-	-	-	-	-
Zimbabwe	5	-	-	-	-	-	5	-	-	-	-	-	-	-	-
State of Palestine	4	-	-	-	-	-	4	-	-	-	-	-	-	-	-

[81] The Working Group determined during its 108th session that one case was a duplicate and subsequently expunged it from the records

IV. Observations

81. In addition to the observations formulated in its post-sessional documents (see para. 7 above), the Working Group makes the following country-specific observations based on the cooperation received and on significant developments regarding its mandate during the whole reporting period.

Algeria

82. The Working Group reiterates its disappointment (see A/HRC/30/38, para. 58) that, in spite of an official communication received in February 2014 in which the Government invited the Working Group to visit Algeria during the second semester of 2014, it has not accepted the different dates offered by the Working Group. The Working Group continues to hope that it can soon be allowed to conduct a visit to the country.

Bangladesh

83. The Working Group reiterates its regrets that no information has been received from the Government in connection with two general allegations transmitted on 4 May 2011, concerning the alleged frequent use of enforced disappearance as a tool by law enforcement agencies, paramilitary and armed forces to detain and even extrajudicially execute individuals (see A/HRC/22/45 and Corr.1, para. 33, and A/HRC/30/38, para. 61); and on 9 March 2016, concerning the reportedly alarming rise of the number of cases of enforced disappearances in the country (see A/HRC/WGEID/108/1, para. 6).

84. On 12 March 2013, the Working Group requested an invitation to undertake a visit to the country. No response yet has been received from the Government in spite of reminders sent. The Working Group hopes that a positive reply will be received soon.

Burundi

85. The Working Group is concerned about the ongoing situation of violence and instability in Burundi, which may facilitate the occurrence of enforced disappearances. It reiterates article 7 of the Declaration, which provides that no circumstances whatsoever may be invoked to justify enforced disappearances.

86. On 27 May 2009, the Working Group requested an invitation to undertake a visit to the country. Despite reminders sent, no response yet has been received from the Government. The Working Group hopes that a positive reply will be received soon.

Congo

87. The follow-up report on the implementation of the recommendations made by the Working Group after its visit to the Congo in 2012 (A/HRC/19/58/Add.3) can be found in document A/HRC/33/51/Add.4. The Working Group regrets that the Government of the Congo did not cooperate with the Working Group in the process of producing the follow-up report. It hopes that the recommendations contained in the report will be duly and promptly implemented.

Democratic People's Republic of Korea

88. The Working Group, on the basis of the recommendation of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (see A/HRC/28/71, para. 67), decided to request an invitation to undertake a visit to the country on 22 May 2015. The Working Group hopes that a positive reply will be received soon.

Egypt

89. The Working Group thanks the Government for the high number of replies, which demonstrate the Government's commitment to engage with the Working Group and allowed it to clarify a high number of cases. It is also grateful for the constructive meeting held during the 109th session of the Working Group. It is however extremely concerned that, during the reporting period, it transmitted 131 new cases under its urgent action procedure to the Government (see A/HRC/WGEID/107/1, paras. 36–43; A/HRC/WGEID/108/1, para. 45; A/HRC/WGEID/109/1, paras. 27 ff.) in relation to what seems to be an increasing pattern of disappearances, notably short-term disappearances (see A/HRC/30/38, para. 67). It reiterates that, as provided in article 7 of the Declaration, no circumstances whatsoever may be invoked to justify enforced disappearances, and that accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information (art. 10 (2) of the Declaration).

90. On 30 June 2011, the Working Group requested an invitation to undertake a visit to the country. No response yet has been received from the Government in spite of reminders sent. The Working Group hopes that a positive reply will be received soon.

India

91. The Working Group regrets that it has not received a reply to a letter, transmitted jointly with two other special procedures mandate holders on 23 January 2015, concerning the allegations of continuing construction work on the site of a newly discovered mass grave (see A/HRC/WGEID/105/1, para. 66, and A/HRC/30/38, para. 73). The Working Group emphasized the importance of preserving mass grave sites, including ensuring that an effective criminal and forensic investigation can take place, and to take appropriate measures to assist victims to achieve truth and justice.

92. On 16 August 2010, the Working Group requested an invitation to undertake a visit to the country. No positive response has been received yet in spite of reminders sent. The Working Group hopes that a positive reply will be received soon.

Kenya

93. The Working Group is concerned at the lack of replies from the Government to its communications, including two general allegations transmitted on 30 September 2014 in relation to enforced disappearances and other human rights violations reportedly carried out by the Anti-Terrorism Police Unit (see A/HRC/WGEID/104/1, paras. 71-78, and A/HRC/30/38, para. 76); and on 4 March 2016 in relation to alleged human rights violations, including enforced disappearances of terrorism suspects, in the context of high-handed security measures, such as the "Usalama Watch" security operation carried out in April 2014 (see A/HRC/WGEID/108/1, para. 6). The Working Group reiterates that, as

provided in article 7 of the Declaration, no circumstances whatsoever may be invoked to justify enforced disappearances.

94. On 19 February 2013, the Working Group requested an invitation to undertake a visit to the country. No response yet has been received from the Government in spite of a reminders sent. The Working Group hopes that a positive reply will be received soon.

Mexico

95. The Working Group recommends that the Government of Mexico duly implement the recommendations contained in the follow-up report to the recommendations made by the Working Group after the visit to Mexico in 2011 (see A/HRC/30/38/Add.4).

96. With respect to the case of the 43 disappeared student teachers of Ayotzinapa, the Working Group notes with concern and agrees with the final report by the Interdisciplinary Group of Independent Experts of the Inter-American Commission on Human Rights, which identifies serious gaps in the investigations carried out so far by the authorities and highlights serious deficiencies in the justice system and a worrying weakness of the State to investigate with due diligence gross human rights violations. The Working Group also regrets the campaigns to discredit the legitimate and highly valuable work of various civil society organizations and human rights defenders who have supported the families of students and other victims.[1] Finally, the Working Group fully supports the decision made by the Inter-American Commission on Human Rights to establish a special follow-up mechanism to the work of the Interdisciplinary Group of Independent Experts and urges the State to participate and actively collaborate in such mechanism in order to make it effective.

Pakistan

97. The Working Group is concerned that, during the reporting period, it transmitted to the Government 321 new cases under its urgent action procedure, a large number of which concern individuals abducted in the Sindh Province, who are reportedly affiliated with the Muttahida Quami Movement (see A/HRC/WGEID/107/1, paras. 77-80; A/HRC/WGEID/108/1, para. 74; A/HRC/WGEID/109/1, paras. 60-65). The Working Group thanks the Government for the replies dated 2 and 4 February 2016 providing information on a high number of cases, which demonstrate the Government's commitment to engage with the Working Group. It is also grateful for the constructive meeting held during the 109th session of the Working Group. However, it reiterates that, as provided in article 7 of the Declaration, no circumstances whatsoever may be invoked to justify enforced disappearances, and that accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information (art. 10 (2) of the Declaration).

98. The Working Group reiterates its regrets that the Government did not reply to the concerns mentioned in the general allegation concerning the Protection of Pakistan Act, transmitted by the Working Group on 20 November 2015, jointly with other mandates.

99. The follow-up report on the implementation of the recommendations made by the Working Group after its visit to Pakistan in 2012 (see A/HRC/22/45/Add.2) can be found in document A/HRC/33/51/Add.4. The Working Group thanks the Government of Pakistan for its cooperation throughout the process, but regrets that most of the recommendations

[1] See also on this para. 35 above.

contained in its country visit report have not been implemented. The Working Group hopes that its recommendations will be duly and promptly implemented.

Russian Federation

100. On 2 November 2006, the Working Group requested an invitation to undertake a visit to the country. No positive response has been received yet in spite of reminders sent. The Working Group hopes that a positive reply will be received soon.

South Sudan

101. The Working Group welcomes the invitation received to visit the country and looks forward the conduct of the visit during the last quarter of 2016.

Syrian Arab Republic

102. The Working Group continues to be gravely concerned about the situation in the Syrian Arab Republic, which may facilitate the occurrence of enforced disappearances. It reiterates article 7 of the Declaration, which provides that no circumstances whatsoever may be invoked to justify enforced disappearances.

103. The Working Group reiterates its call to the Security Council to consider referring the situation in the Syrian Arab Republic to the International Criminal Court (see A/HRC/27/49, para. 99).

104. On 19 September 2011, the Working Group requested an invitation to undertake a visit to the country. No response yet has been received from the Government in spite of reminders sent. The Working Group hopes that a positive reply will be received soon.

Thailand

105. On 30 June 2011, the Working Group requested an invitation to undertake a visit to the country. No positive response yet has been received from the Government in spite of reminders sent. The Working Group hopes that a positive reply will be received soon.

Timor-Leste

106. The Working Group reiterates its regrets that the Government of Timor-Leste did not cooperate with the Working Group in the process of producing the follow-up report presented to the Human Rights Council in September 2015 (see A/HRC/30/38, para. 90). The Working Group hopes that the recommendations contained in the report will be nevertheless duly implemented (see A/HRC/30/38/Add.4).

United Arab Emirates

107. On 13 September 2013, the Working Group requested an invitation to undertake a visit to the country. No response yet has been received from the Government in spite of a reminders sent. The Working Group hopes that a positive reply will be received soon.

Ukraine

108. The Working Group continues to be gravely concerned about the situation in Ukraine, which may facilitate the occurrence of enforced disappearances. It reiterates article 7 of the Declaration, which provides that no circumstances whatsoever may be invoked to justify enforced disappearances. On 22 April 2016, the Working Group requested an invitation to undertake a visit to the country and hopes that a positive reply will be received soon.

Yemen

109. The Working Group is concerned about the deteriorating situation in Yemen, which may facilitate the occurrence of enforced disappearances (see A/HRC/30/31). It reiterates article 7 of the Declaration, which provides that no circumstances whatsoever may be invoked to justify enforced disappearances.

V. Conclusions and recommendations

110. **The Working Group is seriously concerned that the number of enforced disappearances is increasingly rising across the world with the false and pernicious belief that they are a useful tool to preserve national security and combat terrorism or organized crime. A demonstration of this sad reality is the fact that, during the reporting period, the Working Group transmitted 766 newly reported cases of disappearance to 37 States. It used the urgent action procedure in 483 of those cases, which allegedly occurred within the three months preceding the receipt of the report by the Working Group. The number of urgent actions transmitted in the course of the reporting year is more than three times higher than those reflected in the previous year's annual report. This is of extreme concern.**

111. **In spite of the large number of cases, underreporting remains a major problem. More assistance should be provided to family members and members of civil society to enable them to report cases to the Working Group and more importantly to keep working on enforced disappearance issues.**

112. **The Working Group cannot discharge its mandate without the cooperation of States, particularly in providing information to the families about the fate or whereabouts of disappeared persons. In that respect, the Working Group welcomes that a high number of States continued cooperating with the mandate with regular and substantive replies. At the same time, it remains concerned that a significant number have never replied to the Working Group or have provided responses that do not contain any relevant information. The Working Group urges all States to fulfil their obligations under the Declaration and the relevant resolutions of the General Assembly and the Human Rights Council to properly investigate cases of enforced disappearances and to cooperate with the Working Group.**

113. **During the reporting period, the Working Group continued to observe a pattern of "short-term" enforced disappearances being used in a number of countries. The Working Group expresses its deep concern at the phenomenon. It stresses that there is no time limit, no matter how short, for an enforced disappearance to occur and that accurate information on the detention of any person deprived of liberty and their place of detention shall be made promptly available to their family members.**

114. The Working Group is concerned about the situation in a number of countries, as reflected in the present report. It reiterates article 7 of the Declaration, which provides that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. The number of urgent actions sent during the reporting period, in particular to Egypt and Pakistan, is of serious concern. The Working Group appreciates that both Governments maintain a fruitful dialogue with the Working Group and cooperate with the mandate, including through providng information on cases.

115. The Working Group continues to be concerned about increasing instances of abductions carried out by non-State actors, which may be tantamount of acts of enforced disappearances. The Working Group held an expert meeting in February 2016 to discuss the issue and will continue to study whether those situations may fall under its mandate and, if so, what actions should be taken. The Working Group calls on all relevant stakeholders to take appropriate measures in relation to the issue and to provide information to, and share their views on the matter with, the Working Group.

116. The Working Group continues to note a pattern of threats, intimidation and reprisals against victims of enforced disappearance, including family members, witnesses and human rights defenders working on such cases. It calls upon States to take specific measures to prevent such acts, protect those working on cases of enforced disappearances and punish the perpetrators, in accordance with article 13 (1) and (3) of the Declaration. The Working Group reiterates its support for the establishment of a United Nations-wide senior focal point to engage with all stakeholders, in particular Member States, to promote the prevention of, protection against and accountability for reprisals and intimidation related to cooperation with the United Nations, its representatives and mechanisms (see A/HRC/27/49, para. 119 and A/HRC/30/38, para. 104). It regrets that still no progress has been made on that matter during the reporting period.

117. The Working Group has decided to study further the question of enforced disappearances in the context of migration (see above, paras. 45 ff.). It calls upon all States to also carefully look into the matter and inform the Working Group of any measure taken to prevent and combat that phenomenon.

118. Country visits are an integral part of the mandate fulfilled by the Working Group. Visits allow the Working Group to highlight country practices in addressing enforced disappearance, to assist States in reducing obstacles to implement the Declaration and to ensure direct contact with the family members of victims. The Working Group thanks the Government of South Sudan for the invitation extended during the reporting period. It also recognizes the support provided by the Governments of Sri Lanka and Turkey during the visits carried out in the reporting period. During that period, the Working Group requested visits to Lebanon and Ukraine, which have both issues standing invitations to special procedures of the Human Rights Council. In addition to those new requests, the Working Group has requested in the past — and reiterated during the reporting period — a visit to the following countries, without having yet received a positive response: Bangladesh, Bahrain, Belarus, Burundi, China, Egypt, India, Indonesia, Kenya, Nepal, Nicaragua, the Philippines, the Russian Federation, Rwanda, South Africa, the Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia, the United Arab Emirates, Uzbekistan and Zimbabwe. There are other countries that have invited the Working Group to visit and/or confirmed invitations, but for which specific dates to visit have not been agreed, such as Algeria, the Islamic Republic of Iran and the

Sudan. The Working Group therefore calls upon all States with pending requests for visits to respond favourably to them in the light of Human Rights Council resolution 21/4, and those that have agreed to visits to respond as soon as possible with specific dates.

119. Observing that many of the commissions of inquiry and other fact-finding or investigative bodies created by the Human Rights Council gather abundant information on human rights violations, including enforced disappearances, the Working Group recommends that the Council consider giving the Working Group a role in the follow-up to these findings once the mandate of those commissions or bodies ends, including by providing for the possibility of transferring the information concerning cases of enforced disappearances to the Working Group.

120. The Working Group continues the practice of holding one session per year outside Geneva to inter alia facilitate the interaction with relatives of the disappeared and raise awareness of the Working Group's mandate and activities at the local and regional level. It appreciates the invitation received from Morocco to host a session during the reporting period, as well as that from the Republic of Korea to host in Seoul a session in 2017. The Working Group invites other countries to follow those good examples.

121. The Working Group once again calls upon States that have not signed and/or ratified the International Convention for the Protection of All Persons from Enforced Disappearance to do so as soon as possible and to accept the competence of the Committee on Enforced Disappearances to receive individual cases under article 31, and inter-State complaints under article 32 of the Convention.

Annex I

Country visit requests and invitations extended

Invitations extended by the WGEID

Country	*Date*
Albania	tbd
Algeria[a]	tbd
Ecuador	tbd
Iran (Islamic Republic of)[b]	tbd
Kyrgyzstan	tbd
Libya	tbd, postponed
South Sudan	Last quarter of 2016
Sudan	tbd
Tajikistan	tbd

Visits requested by the WGEID

Country	*Request sent*	*Last reminder sent*
Bahrain	27 October 2014	27 November 2015
Bangladesh	12 March 2013	27 November 2015
Belarus	30 June 2011	27 November 2015
Burundi	27 May 2009	27 November 2015
China	19 February 2013	27 November 2015
Egypt	30 June 2011	27 November 2015
India	16 August 2010	27 November 2015
Indonesia	12 December 2006	27 November 2015
Kenya	19 February 2013	27 November 2015
Lebanon	27 November 2015	
Nepal	12 May 2006	27 November 2015
Nicaragua	23 May 2006	27 November 2015
Philippines	3 April 2013	27 November 2015

[a] Please refer to para. 81 of the current document.
[b] Please refer to para. 29 of the current document.

Visits requested by the WGEID

Country	*Request sent*	*Last reminder sent*
Russian Federation	2 November 2006	27 November 2015
Rwanda	27 October 2014	27 November 2015
South Africa	28 October 2014	27 November 2015
South Sudan	29 August 2011	27 November 2015
Syrian Arab Republic	19 September 2011	27 November 2015
Thailand	30 June 2011	27 November 2015
The former Yugoslav Republic of Macedonia	27 October 2014	27 November 2015
Ukraine	22 April 2016	
United Arab Emirates	13 September 2013	27 November 2015
Uzbekistan	30 June 2011	27 November 2015
Zimbabwe	20 July 2009	27 November 2015

Annex II

Statistical summary: cases of enforced or involuntary disappearance reported to the Working Group between 1980 and 2016, and general allegations transmitted

	Cases transmitted to the Government				Cases clarified by		Status of person at date of clarification					General Allegation	
	Outstanding cases		Total							Discontinued cases	Closed cases		
States entities	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead			Urgent	Response
Afghanistan	3		3										
Albania	1		1										
Algeria	3 139	20	3 168	21	9	20	11	10	8			Yes (2013)	Yes
Angola	2		12	1	7				7	3			
Argentina	3 244	727	3 446	774	124	78	39	5	158				
Bahrain	4		14		2	8	2	8				Yes (2014)	Yes
Bangladesh	34	1	36	2	1	1	2					Yes (2011, 2016)	No
Belarus	3		3										
Bhutan	5		5										
Bolivia (Plurinational State of)	28	3	48	3	19	1	19		1				
Bosnia and Herzegovina												Yes (2009/2011/2014)	Yes
Brazil	13		63	4	46	4	1		49				
Bulgaria			3		3				3				
Burkina Faso			3		3				3				
Burundi	53	1	54	1		1	1						
Cambodia	1		3							2			
Cameroon	14		19		5		4	1				Yes (2016)	No
Central African Republic	3		3									Yes (2013)	No
Chad	23		34		3	8	9	1	1				
Chile	784	63	907	65	100	23	2		121				

States entities	Cases transmitted to the Government				Cases clarified by:		Status of person at date of clarification					General allegation	
	Outstanding cases		Total										
	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	Art. 30	Response
China	41	23	138	21	78	19	59	36	2			Yes (2010, 2011)	Yes
Colombia	973	96	1 260	126	219	68	160	24	103			Yes (2012, 2013, 2016)	Yes
Congo	89	3	91	3						2			
Cuba			1		1			1					
Czech Republic												Yes (2009)	Yes
Democratic People's Republic of Korea	94	23	94	23								Yes (2012)	No
Democratic Republic of the Congo	47	11	56	11	6	3	9					Yes (2015)	No
Denmark			1			1		1				Yes (2009)	No
Dominican Republic	2		5		2		2			1			
Ecuador	5		27	2	18	4	12	4	6				
Egypt	226	1	311	3	47	38	9	76				Yes (2011, 2016)	Yes
El Salvador	2 282	296	2 673	333	318	73	196	175	20			Yes (2015)	No
Equatorial Guinea	8		8										
Eritrea	62	4	62	4								Yes (2012)	No
Ethiopia	112	1	119	2	3	4	2	5					
France	1		1										
Gambia[a]	4	2	12	2		8	8						
Georgia			1		1				1				
Greece	1		3							2			
Guatemala	2 897	372	3 154	390	177	80	187	6	64			Yes (2011, 2013)	Yes
Guinea	37	2	44	2		7			7				
Guyana	1		1										

[a] At the 107th session, the Working group decided to transfer one case from Senegal to Gambia

A/HRC/33/51

	Cases transmitted to the Government				Cases clarified by:		Status of persons at date of clarification					General Allegation	
	Outstanding cases		Total										
States entities	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead	Disappeared cases	Clinical cases	GA sent	Response
Haiti	38	1	48	1	9	1	1	4	5				
Honduras	130	21	210	34	37	43	54	8	18				
India	354	11	434	13	68	12	51	7	22			Yes(2009/ 2011/2013)	No
Indonesia	163	3	167	3	3	1	3	1				Yes(2011/ 2013)	No
Iran (Islamic Republic of Iran)	524	102	543	103	14	5	8	2	9				
Iraq	16 413	2 300	16 560	2 317	117	30	122	16	9				
Ireland													
Israel	2		3			1			1			Yes (2009)	No
Japan[b]			4	3									
Jordan	4		5			1		1					
Kazakhstan			2			2		2					
Kenya	72		72									Yes (2011/2014/ 2016)	No
Kuwait	2		2										
Lao People's Democratic Republic	2	1	8	1		5		4	1	1			
Lebanon	313	19	321	19	2	6	7	1					
Libya	18	1	26	1		8	6	2				Yes(2014)	No
Lithuania													
Malaysia			2			1		1				Yes(2012)	Yes
Maldives	1		1							1			
Mauritania	4		4										
Mexico	378	33	558	43	134	30	77	18	69	16		Yes(2013/ 2014)	No
Montenegro			16	1	1			1		14	1		

[b] The four cases were transferred to the Democratic People's Republic of Korea

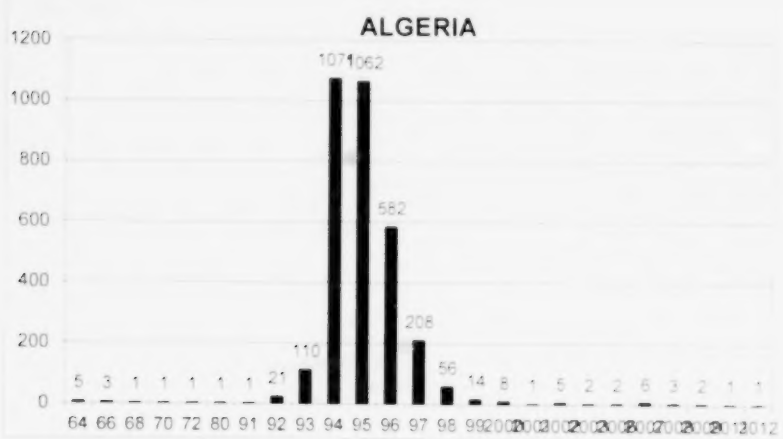
States entities	Cases transmitted to the Government: Outstanding cases: Cases	Cases transmitted to the Government: Outstanding cases: Female	Cases transmitted to the Government: Total: Cases	Cases transmitted to the Government: Total: Female	Cases clarified by: Government	Cases clarified by: Sources	Status of person at date of clarification: At liberty	Status of person at date of clarification: In detention	Status of person at date of clarification: Dead	Discontinued cases	Closed cases	General Allegation: USA sent	General Allegation: Response
Morocco	96	8	330	30	160	53	141	16	56	21		Yes(2013)	Yes
Mozambique	2		2										
Myanmar	2	1	9	6	7		5	2					
Namibia	2		3			1	1						
Nepal	461	56	675	72	135	79	153	60	1			Yes(2014)	No
Nicaragua	103	2	234	4	112	19	45	11	75				
Nigeria			6		6		6						
Oman	1		2			1	1						
Pakistan	511	2	623	2	56	56	53	42	17			Yes(2015)	Yes
Paraguay	0		23		20		19		1	3		Yes(2014)	Yes
Peru	2 365	236	3 006	311	253	388	450	85	106				
Philippines	625	74	786	94	126	35	112	19	30			Yes(2009 2012)	No
Romania			1		1		1						
Republic of Korea	3		3										
Russian Federation	480	25	492	27	2	10	12						
Rwanda	23	2	26	2		2	1	1		1			
Saudi Arabia	5		15		4	4	3	4	1	2			
Serbia	0		1		1		1						
Seychelles	3		3										
Somalia	1		1										
South Africa	1	1	12	2	3	2	1	1	3	6			
South Sudan	2		2										
Spain	7		9		2				2			Yes(2014)	Yes
Sri Lanka	5 758	100	12 349	170	6 551	40	118	27	6 446			Yes(2011 2014)	Yes
Sudan*	174	5	383	37	205	4	209						

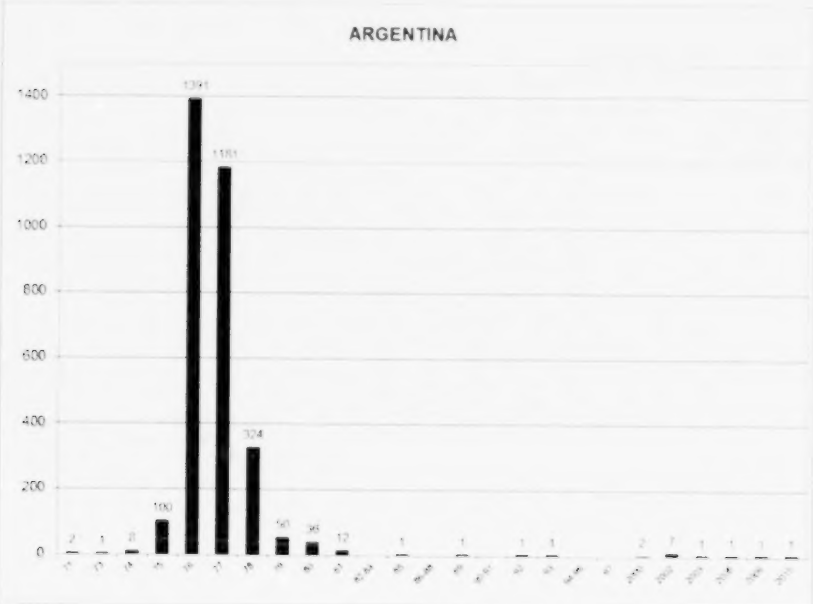
* In 2012, the Working group decided to transfer one case from Sudan to South Sudan

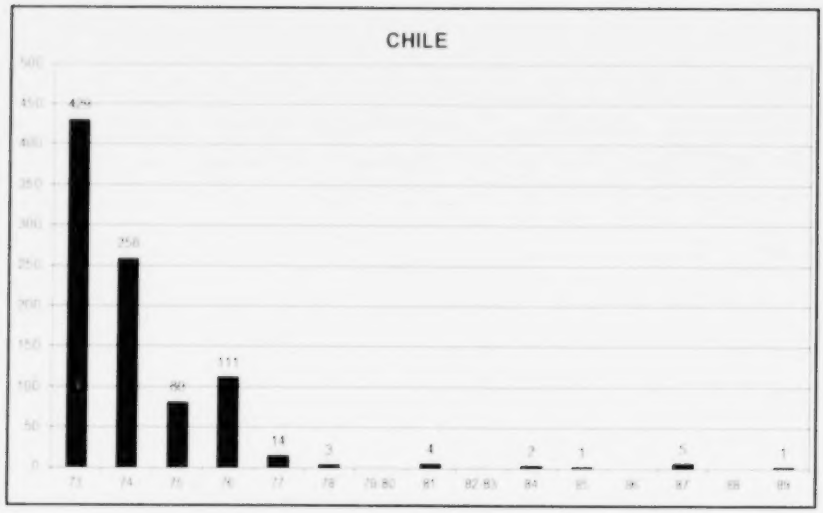
States entities	Cases transmitted to the Government				Cases clarified by		Status of persons at date of clarification					Urgent Allegation	
	Outstanding cases		Total										
	Cases	Female	Cases	Female	Government	Sources	At liberty	In detention	Dead	Discontinued cases	Closed cases	UA sent	Response
Switzerland			1		1			1					
Syrian Arab Republic	179	11	236	12	15	42	30	21	6			Yes(2)(2011)	Yes
Tajikistan	3		10		5	2	1		6				
Thailand	82	8	86	8	2		1	1		2		Yes	No
The former Yugoslav Republic of Macedonia												Yes(2009)	No
Timor-Leste	428	28	504	36	58	18	51	23	2				
Togo	10	2	11	2		1	1						
Tunisia	2		19	1	12	5	2	15					
Turkey	78	2	201	11	73	49	71	24	27	1			
Turkmenistan	3		5		2			2					
Uganda	15	2	22	4	2	5	2	5					
Ukraine	6		8		2		1		1				
United Arab Emirates	10	1	42	5	7	25	8	24					
United Republic of Tanzania			2		2			2					
United States of America	4		5		1		1						
Uruguay	17	2	31	7	13	1	5	4	5			Yes(2013-2015)	Yes
Uzbekistan	7		20		12	1	2	11					
Venezuela (Bolivarian Republic of)	15	2	19	3	4		1		3				
Viet Nam	1		2		1			1					
Yemen	11		169		135	9	66	5	73	14			
Zambia			1	1		1		1					
Zimbabwe	5	1	7	1	1	1	1		1			Yes(2009)	No
State of Palestine	4	1	4	1									

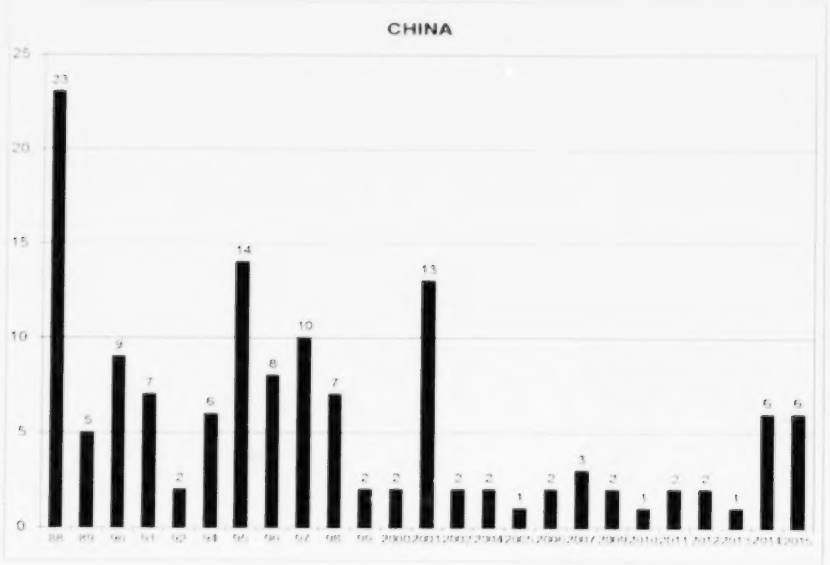
Annex III

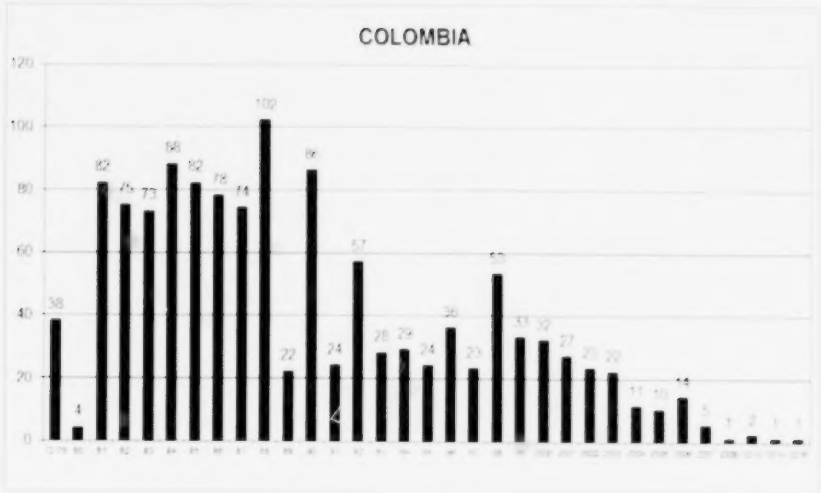
Graphs showing the number of cases of enforced disappearances per year and per country according to the cases transmitted by the Working Group during the period 1980–18 May 2016 (only for countries with more than 100 cases transmitted)

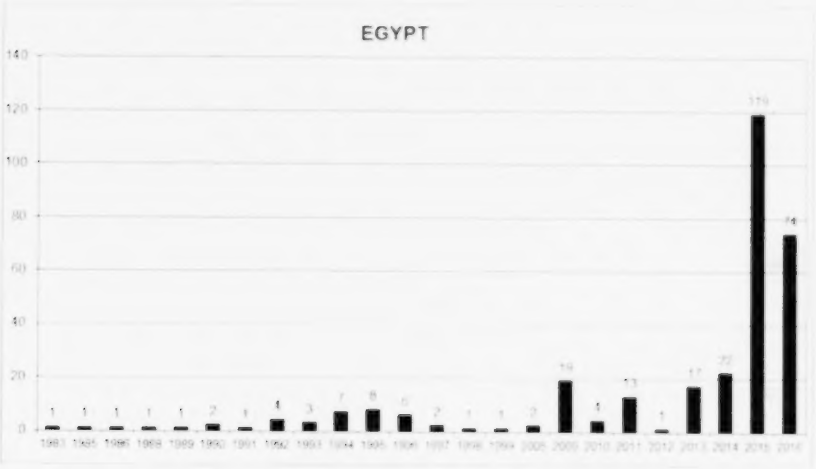


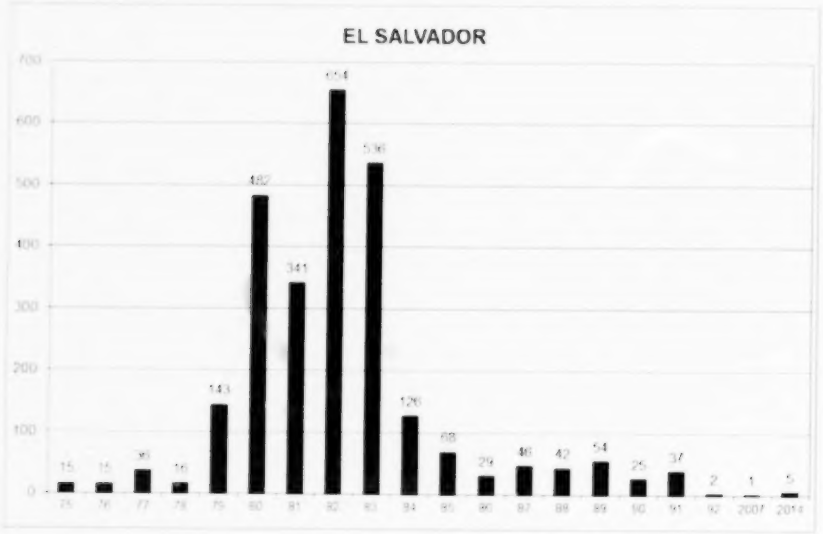


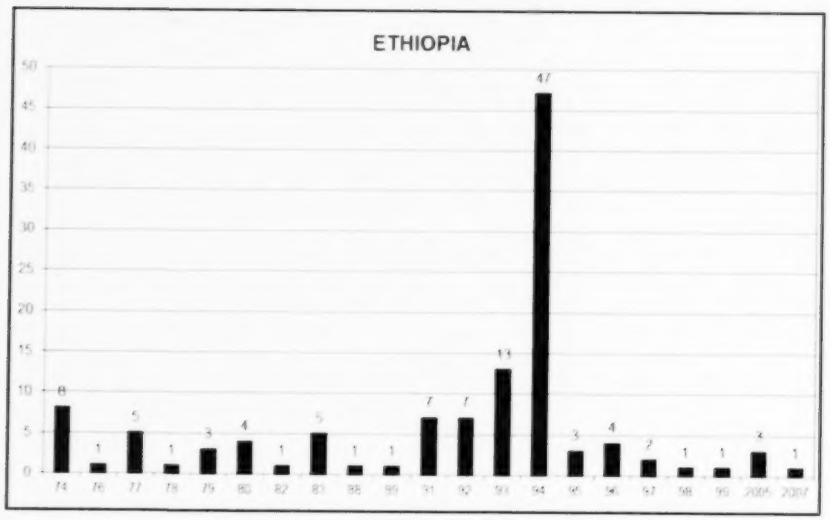

CHILE
256
111
14
3
4
2
1
5
1

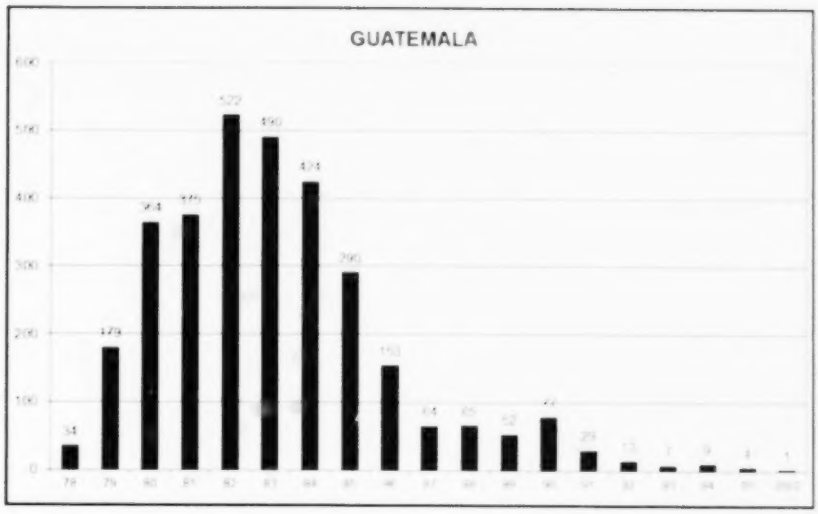

CHINA
25
20
15
10
5
0
23
5
9
7
2
6
14
8
10
7
2
2
13
2
2
1
2
3
2
1
2
2
1
6
6

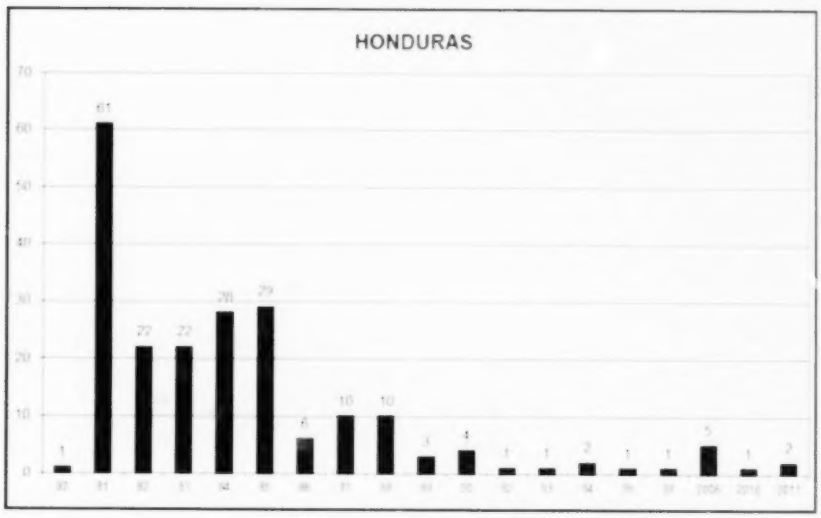

COLOMBIA
120
100
80
60
40
20
0
38
4
82
75
73
88
82
78
74
102
22
86
24
57
28
29
24
36
23
53
33
32
27
23
22
11
10
14
5
1
2
1
1

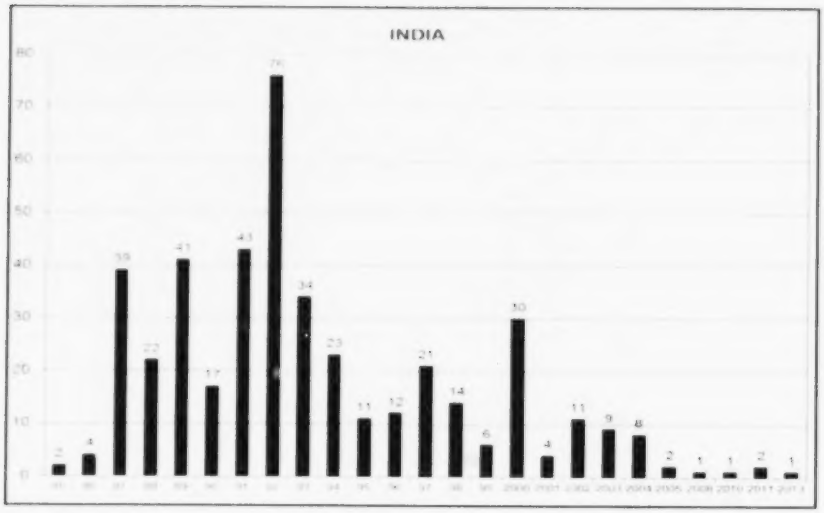

EGYPT
140
120
100
80
60
40
20
0
1
1
1
1
1
2
1
4
3
7
8
6
2
1
1
2
19
4
13
1
17
22
119
74

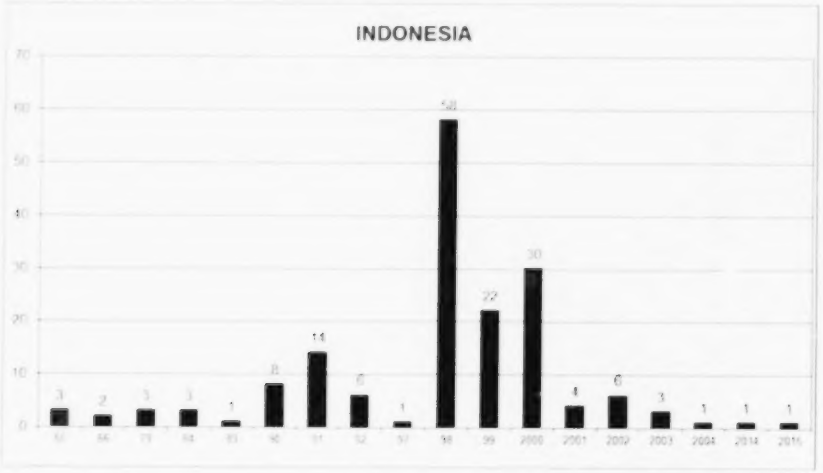

EL SALVADOR
700
600
500
400
300
200
100
0
15
15
35
16
143
482
341
654
536
120
68
29
46
42
54
25
37
2
1
5
2007
2014

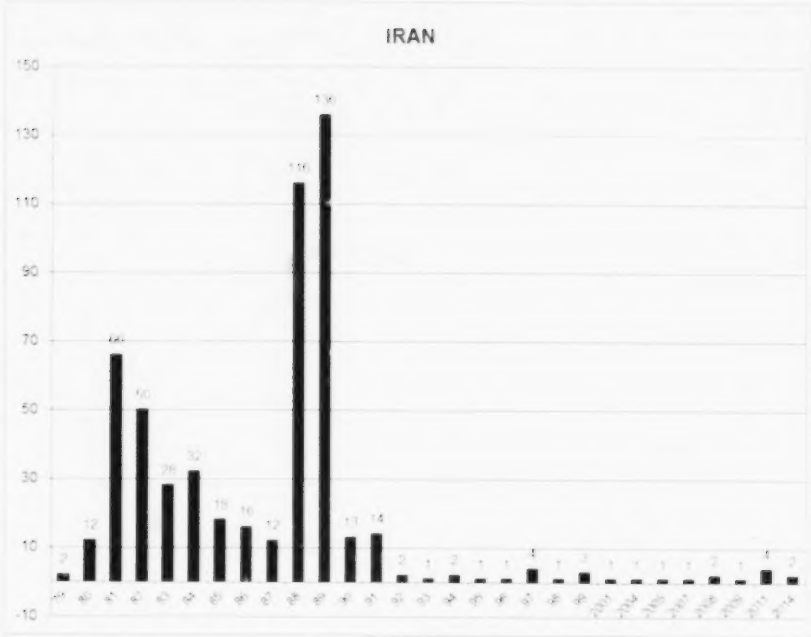

ETHIOPIA
50
45
40
35
30
25
20
15
10
5
0
8
1
5
1
3
4
1
5
1
1
7
7
13
47
3
4
2
1
1
4
1
2005
2007

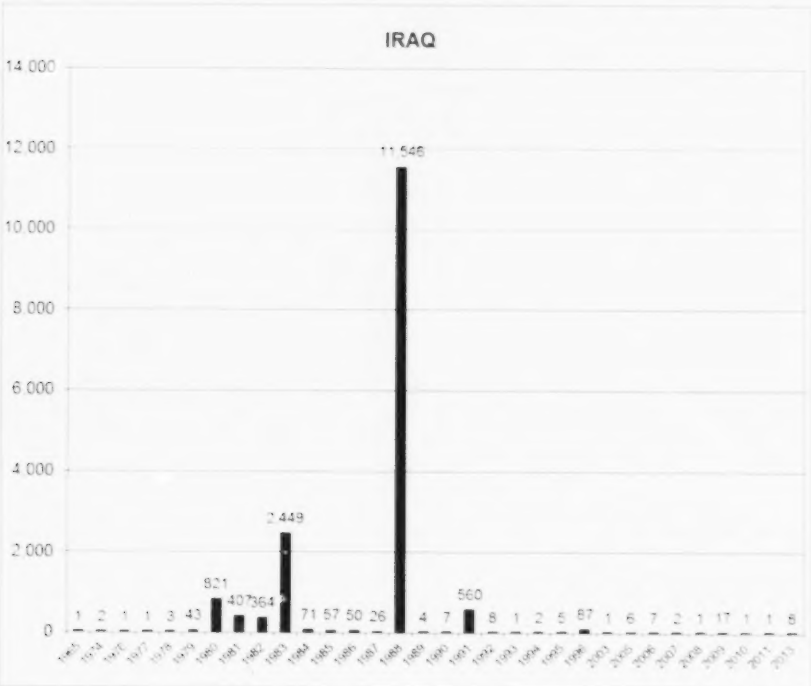

GUATEMALA
600
500
400
300
200
100
0
34
179
364
375
522
490
424
290
153
64
65
52
74
29
13
7
9
4
1

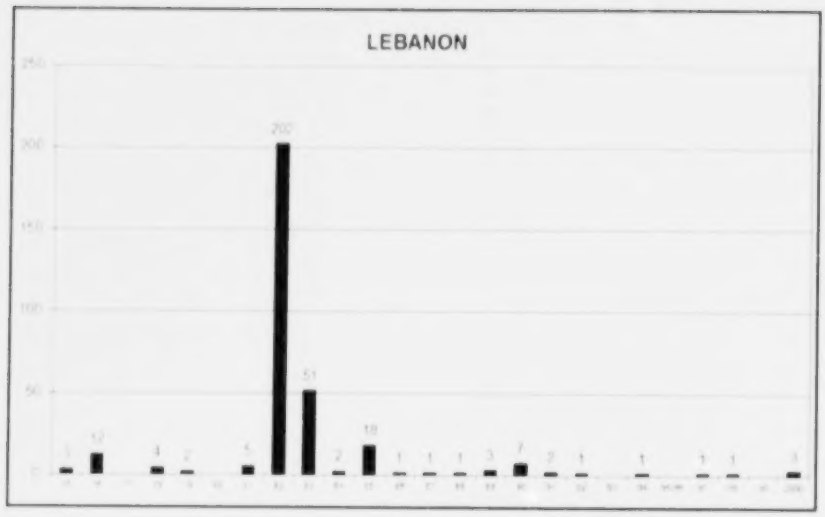

HONDURAS
70
60
50
40
30
20
10
0
1
61
22
22
28
29
6
10
10
3
4
1
1
2
1
1
5
1
2

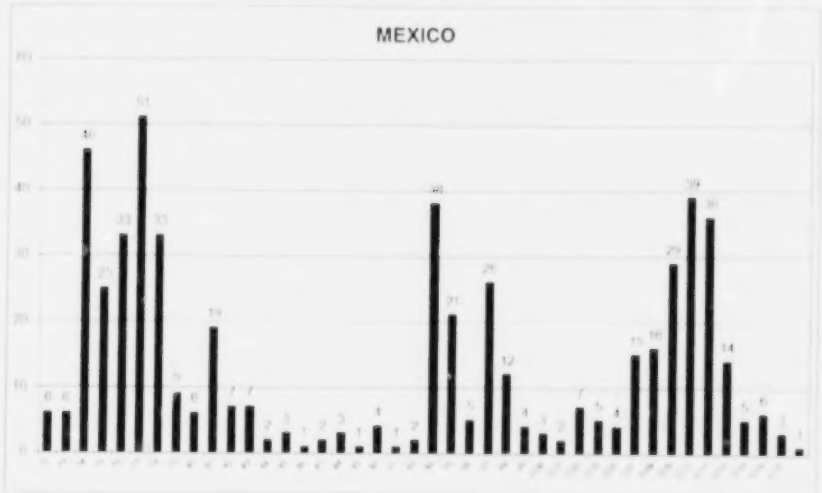

INDIA
80
70
60
50
40
30
20
10
0
2
4
39
22
41
17
43
76
34
23
11
12
21
14
6
30
4
11
9
8
2
1
1
2
1

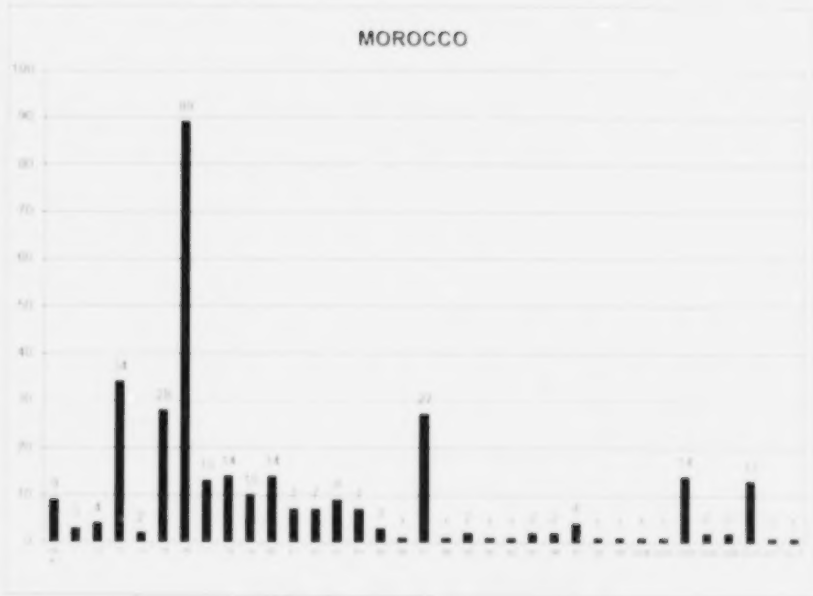

INDONESIA
70
60
50
40
30
20
10
0
3
2
3
3
1
8
14
6
1
58
22
30
4
6
3
1
1
1

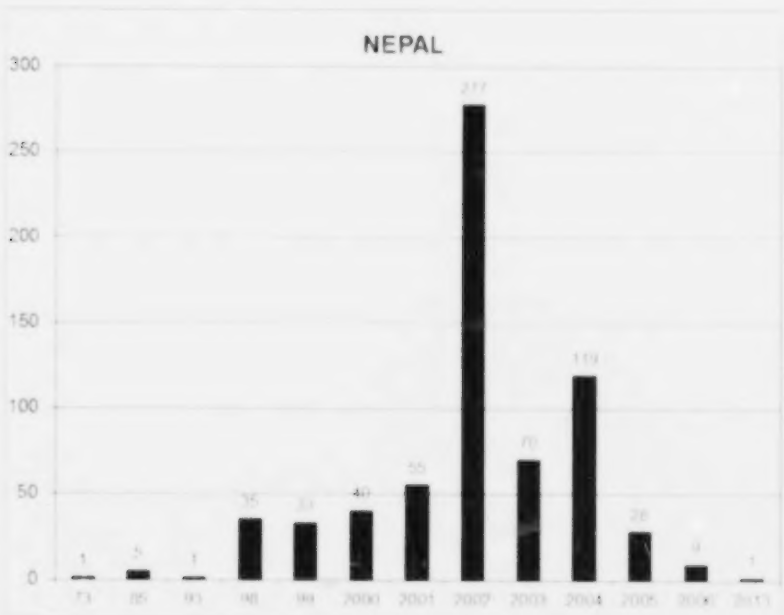

IRAN
150
130
110
90
70
50
30
10
-10
2
12
68
50
29
32
16
14
12
113
133
11
14
2
1
2
1
1
4
1
3
1
1
1
1
2
1
4
2

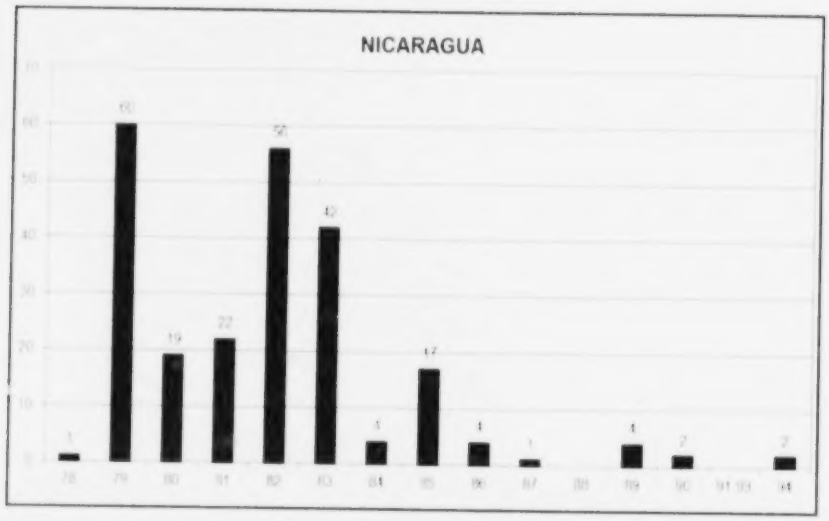

IRAQ
14.000
12.000
10.000
8.000
6.000
4.000
2.000
0
1
2
1
1
3
43
821
407
364
2.449
71
57
50
26
11.546
4
7
560
8
1
2
5
87
1
6
7
2
1
17
1
1
8


LEBANON

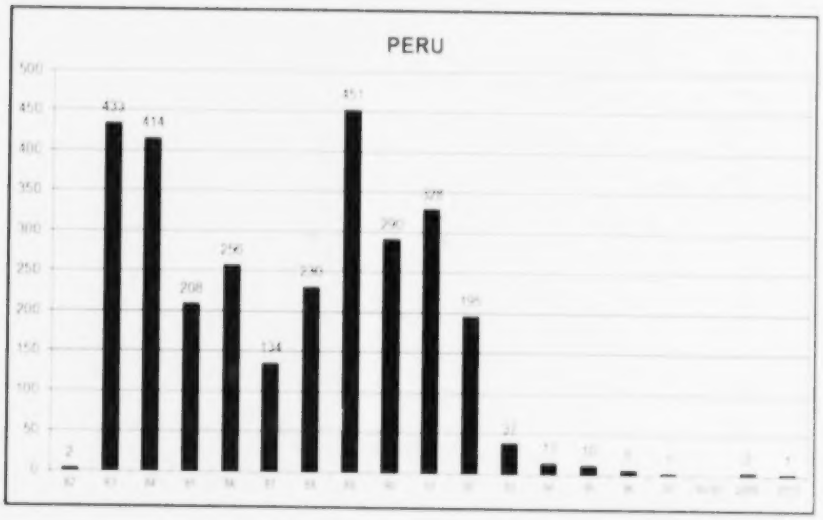

MEXICO

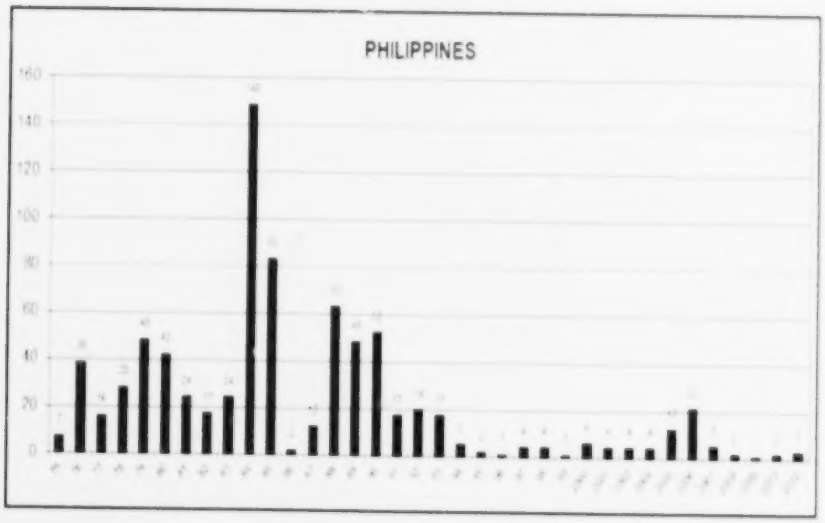

MOROCCO

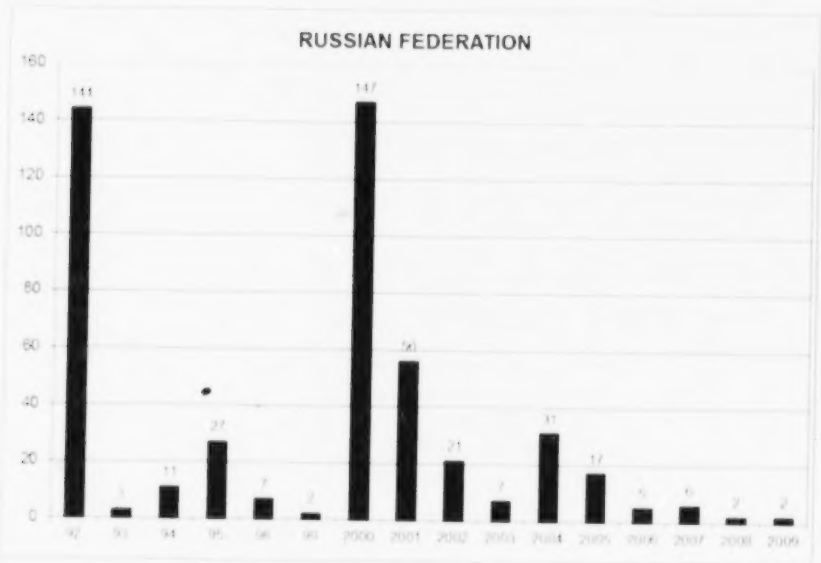

NEPAL
300
250
200
150
100
50
0

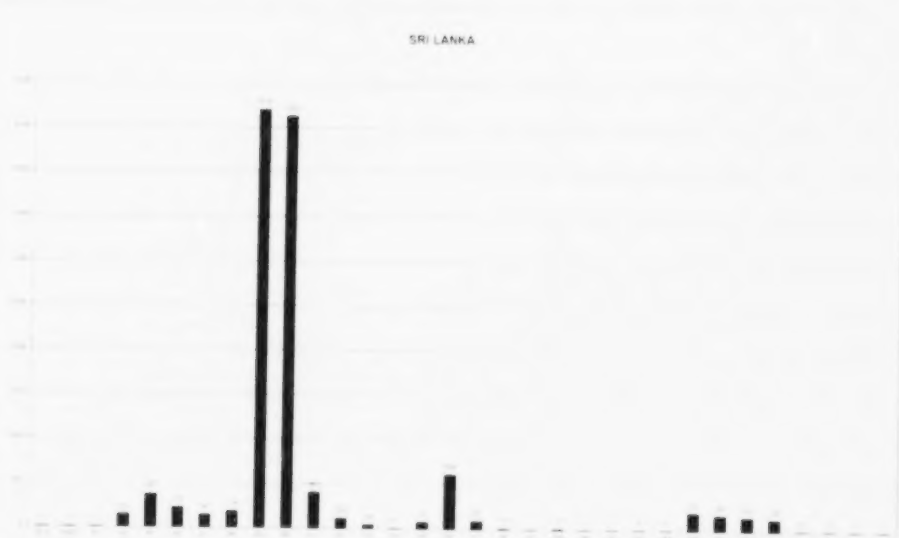

NICARAGUA
1
60
19
22
55
42
4
17
4
1
4
2
2

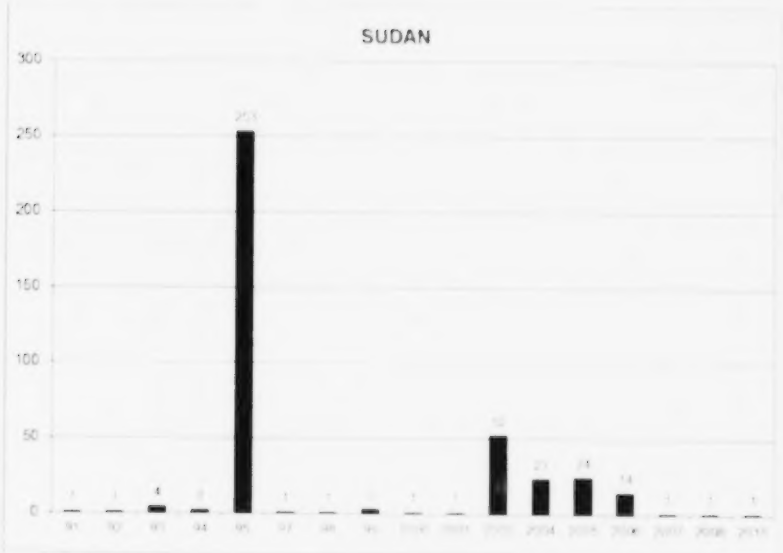
PAKISTAN
250
200
150
100
50
0
4
8
1
4
3
3
42
12
4
1
2
4
1
1
3
9
23
2
3
17
23
16
6
23
39
234
137

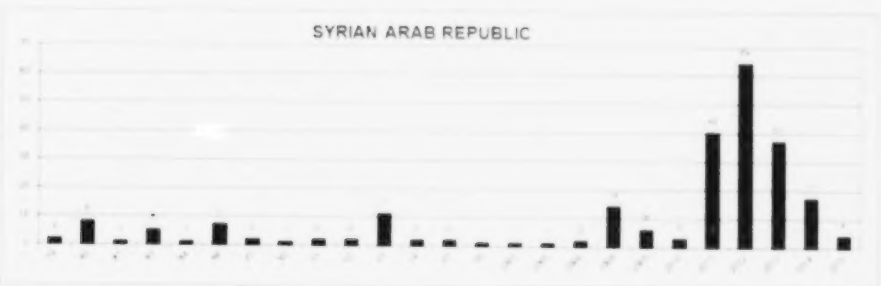

PERU
500
450
400
350
300
250
200
150
100
50
0
433
414
208
254
134
228
451
288
325
191
22

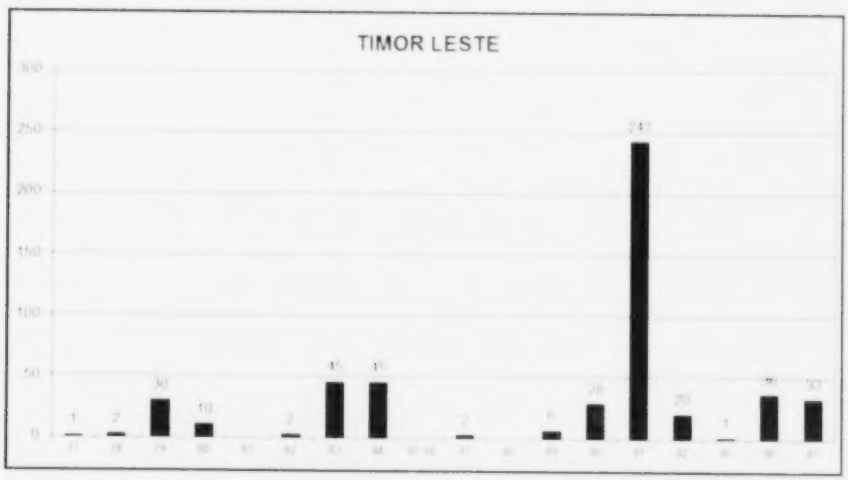

PHILIPPINES
160
140
120
100
80
60
40
20
0

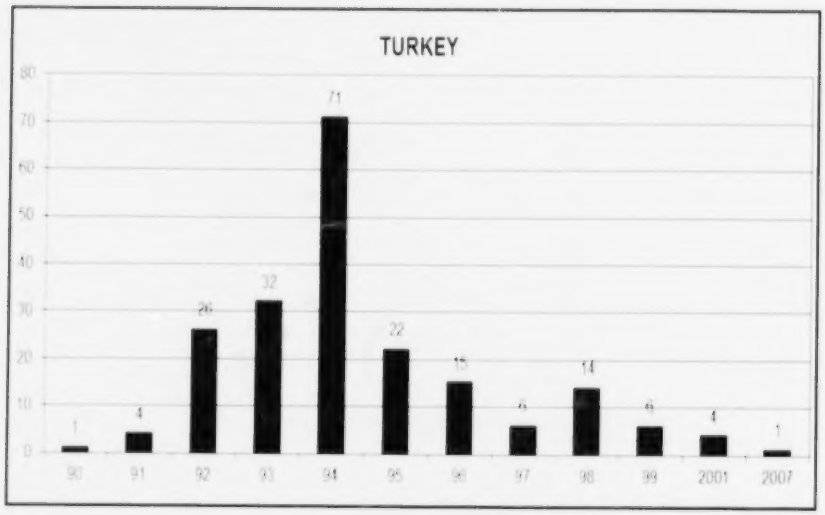

RUSSIAN FEDERATION
160
140
120
100
80
60
40
20
0
141
147
50
27
21
17
2000
2001
2002
2004
2005
2009

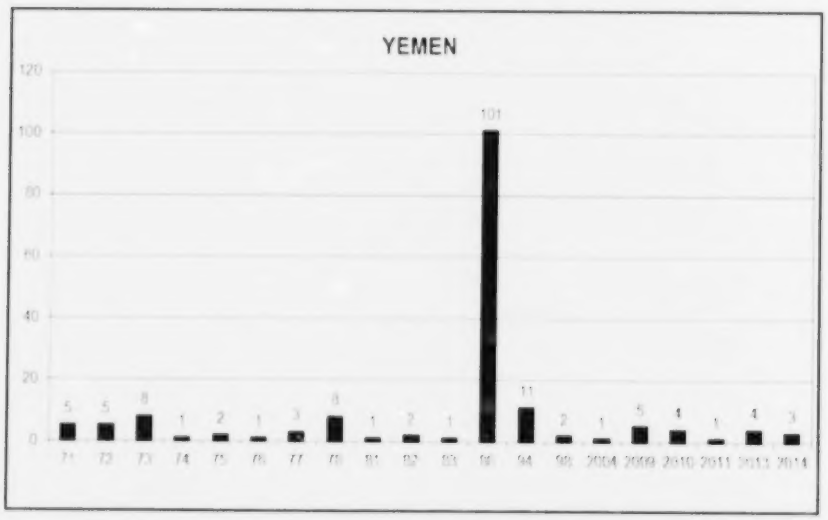

SRI LANKA


SUDAN
300
250
200
150
100
50
0


SYRIAN ARAB REPUBLIC


TIMOR LESTE
250
200
150
100
50
0


TURKEY
80
70
60
50
40
30
20
10
0
1
4
26
32
71
22
15
5
14
5
4
1
90
91
92
93
94
95
96
97
98
99
2001
2007


YEMEN
120
100
80
60
40
20
0
5
5
8
1
2
1
3
8
1
2
1
101
11
2
1
5
4
1
4
3
71
73
75
94
2004
2009
2010
2011
2013
2014

United Nations A/HRC/33/51/Add.1

General Assembly

Distr.: General
27 July 2016

Original: English

Human Rights Council
Thirty-third session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey

Note by the Secretariat

Turkey has not come to terms with past enforced disappearances in all relevant areas, namely truth, justice, reparation, and memory of the victims. There has been no comprehensive policy to address disappearances. Many families do not know the truth about what happened to their loved ones, there has hardly been a single case of criminal responsibility or civil liability for an act of enforced disappearance, there are no reparation programmes independent from the compensation that may be awarded by a court, nor any effective and accessible social or psychological support for families, and there is no public memorial site or symbolic place for the families — and for society as a whole — to remember the victims and pay tribute to them. This lack of measures to address disappearances results from a combination of factors: mainly the lack of clear political will in all spheres to seriously tackle the issue, combined with legal and other obstacles.

GE.16-12989(E)

1612989

Please recycle

Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey*

Contents

		Page
I.	Introduction	3
II.	General situation of enforced disappearances in Turkey	3
III.	Current situation in the south-east	4
IV.	Legislation	5
V.	Truth	7
VI.	Justice	9
VII.	Reparations and memory	11
VIII.	Prevention of enforced disappearances	13
IX.	Conclusions	15
X.	Recommendations	15

* Circulated in the language of submission only.

I. Introduction

1. A delegation of the Working Group on Enforced or Involuntary Disappearances conducted a five-day official visit to Turkey. The visit took place from 14 to 18 March 2016. The delegation was composed of the Chair of the Working Group, Houria Es-Slami; the Vice-Chair, Bernard Duhaime; and a member of the Working Group, Henrikas Mickevičius.

2. This is the second time that the Working Group has visited Turkey, after a first visit in 1998. A number of recommendations made after the first visit are still valid today.[1]

3. At the outset, the Working Group wishes to thank the Government of Turkey for extending an invitation to visit the country, and for the efforts made before and during the visit, particularly by the Ministry of Foreign Affairs, to facilitate the visit. The Working Group appreciates in particular the Government's facilitating of the visit to the south-eastern city of Diyarbakır, which at the time of the mission was the epicentre of a wide security operation. At the same time, it regrets that it was not possible to hold any meeting at the ministerial level, in spite of the requests of the Working Group, given that during such visits it is important to couple substantive meetings at the working level with meetings with authorities at the decision-making level.

4. The Working Group also wishes to thank the Office of the Resident Coordinator and the United Nations country team in Turkey, as well as the Office of the United Nations High Commissioner for Human Rights, for their support.

5. During its visit, the Working Group visited Ankara, Istanbul and Diyarbakır. The Working Group met with representatives of the General Public Prosecutors' Office of the Supreme Court of Appeal, representatives of the Constitutional Court, the Deputy Under-Secretary of the Ministry of Foreign Affairs, the Deputy Under-Secretary of the Ministry of Justice, the Deputy Under-Secretary of the Under-Secretariat of Public Order and Security, the General Staff, representatives of the Gendarmerie General Command, representatives of the General Directorate of Security, the Human Rights Committee of the Grand National Assembly, the Head of the Council of Forensic Medicine in Istanbul, and the Chief Prosecutor and the Vice-Governor in Diyarbakır.

6. The Working Group met a number of relatives of disappeared persons and also held several meetings with civil society organizations and lawyers.

II. General situation of enforced disappearances in Turkey

7. Over the years, the Working Group has transmitted 202 allegations of enforced or involuntary disappearances to the Government of Turkey, of which 79 are still outstanding. As in most countries in the world, the number of cases registered with the Working Group does not necessarily reflect the real extent of the problem. In Turkey, though, it is particularly difficult to assess the real dimension of the problem and to have exact figures on enforced disappearances, given that past disappearances have not been duly acknowledged, and consequently have not been properly addressed. It is therefore essential, as a matter of utmost priority, to fully recognize the past violations and create a mechanism specifically dedicated to investigating fully the fate and whereabouts of those who

[1] See E/CN.4/1999/62/Add.2.

disappeared during the 1980s and 1990s in order to finally provide truth, justice and reparation to the families concerned.

8. The allegations filed with the Working Group mainly relate to disappearances that occurred between 1992 and 1996 in the south-east of Turkey, with the highest number of cases occurring in 1994. These disappearances occurred mostly in the context of clashes between the Kurdish Workers' Party (PKK) and government security forces in the south-east of the country, where a state of emergency existed at the time.[3] Some of the disappearances allegedly occurred during raids conducted by gendarmes, accompanied at times by village guards — a civil defence corps reportedly armed and paid by the Government to fight the PKK. In some cases, the disappeared persons were members of political opposition parties or were journalists working for newspapers opposed to the Government. Most of the cases followed the same pattern: the disappeared persons were allegedly arrested at their homes on charges of belonging to the PKK and were taken to a police station, but their detention was later denied by the authorities — in most cases police officers or State prosecutors. In many cases, torture or ill-treatment at the hands of the security forces was reported or feared.[4]

9. Turkey has done very little so far to come to terms with past enforced disappearances, as consecutive Turkish governments have been reluctant to engage with the issue and there has therefore been no proactive and comprehensive policy to address the right to truth, justice, reparation and memory of the victims. As a result, many families still do not know the truth about what happened to their loved ones, there has hardly been a single case of criminal responsibility or of civil liability for acts of enforced disappearance, there are no reparation programmes independent from the compensation that may be awarded through judicial proceedings, nor any effective and accessible social or psychological support for families, and there is no public memorial site or symbolic place for the families — and for society as a whole — to remember the victims and pay tribute to them. This lack of measures to address disappearances results from a combination of factors, but is mainly due to the lack of political will in all spheres and at all levels to seriously tackle the issue, which is combined with legal and other obstacles, as illustrated further in the present report.

III. Current situation in the south-east

10. Since July 2015, there has been a resurgence of clashes in the south-east of Turkey between the security forces and the PKK. Round-the-clock curfews have been declared for extensive periods in entire neighbourhoods or cities. The current situation in that part of the country is in fact dramatically similar to that described in the 1998 report of the Working Group. A number of human rights entities have expressed, and continue to express, serious concerns in this regard.[5] The Working Group fully acknowledges the serious security challenges that Turkey is currently facing. It recalls at the same time that there can be no justification for human rights violations, including enforced disappearances, in the name of counter-terrorism measures, in accordance with article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance, of 1992 (hereinafter referred to as the Declaration).

[3] See E/CN.4/1996/38, para. 425.

[4] Ibid.

[5] See E/CN.4/1999/62/Add.2, para. 7.

[6] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17002&LangID=E, www.coe.int/en/web/commissioner/-/turkey-security-trumping-human-rights-free-expression-under-threat and CAT/C/TUR/CO/4, paras. 11-14.

11. Although during the visit the Working Group did not receive allegations of recent enforced disappearances,[6] its experience suggests that situations such as the current one in the south-east are conducive to human rights violations, including enforced disappearances. Only a thorough, independent and credible investigation may clarify facts and dispel any doubts as to the nature and extent of the violations occurring on the ground.

12. During its visit, the Working Group heard very troubling testimonies, including of families not being able to have access to the bodies of their loved ones killed during the security operations, and of bodies being disposed of. It also heard allegations of instances of extrajudicial executions and other human rights violations.

13. The Working Group firmly believes that in the current environment it is even more important to come to terms with past violations, as lack of action to address them fosters a culture of impunity which, in turn, may encourage further human rights violations both in the present-day environment and in the future.

Disappearance of migrants transiting through Turkey

14. During the visit, the Working Group received concerning information about the disappearance of migrants in, or transiting through, Turkey. The Working Group received reports of women and children disappearing in trafficking networks, particularly Yazidi women and girls being trafficked from the Syrian Arab Republic to Turkey and sold by Islamic State in Iraq and the Levant (ISIL) in Gaziantep in the south of Turkey. While not all of these may constitute acts of enforced disappearance, according to the information received these acts most often take place with the complicity, or at least the connivance, of local authorities. These very serious allegations deserve a thorough and independent investigation by the Turkish authorities.

IV. Legislation

15. The first legislation-related challenge identified by the Working Group concerns the fact that there is no autonomous criminal offence of enforced disappearance in Turkey, which is an obvious problem when it comes to the investigation, prosecution and adjudication of the acts of enforced or involuntary disappearance. Enforced disappearances are investigated and prosecuted as an element of other criminal offences, such as murder, torture or arbitrary deprivation of liberty. This means that even when the act of enforced disappearance is obvious but the "parent" crime, that is to say, the crime that includes an episode of enforced disappearance, does not reach the required standard of proof, the criminal case is either terminated or the trial ends in an acquittal. This contributes to the public distrust in the judiciary and prosecutorial system, and to the perception of impunity for the perpetrators of enforced disappearances. This lack of trust and shared perception is justified, as only two individuals have been sentenced for committing crimes that included acts of enforced disappearance.[7]

[6] An Urgent Action concerning one individual was sent by the Working Group on 3 June 2016.

[7] The case of Mehmet Şerif Avşar, who was forcibly disappeared in the province of Diyarbakır on 22 April 1994, resulted in five persons being sentenced to six years' imprisonment each for deprivation of liberty and two persons being sentenced to 30 years' imprisonment each for murder. The case of Şevhmus Yavuz, who was forcibly disappeared in the province of Diyarbakır on 11 March 1994, resulted in one person being sentenced to 10 years' imprisonment for murder.

16. In compliance with its obligations under the Declaration, Turkey should pass legislation making acts of enforced disappearance autonomous offences under criminal law that are punishable by appropriate penalties reflecting their extreme seriousness.

17. The criminal offence of enforced disappearance should include various modes of criminal liability, including in relation to any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance. It should also expressly provide for the application of command responsibility or superior individual criminal responsibility for such crime.

18. According to article 17 of the Declaration, acts constituting enforced disappearance shall be considered continuing offences as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified. Hence, another fundamental element of the needed legislation is the express provision that enforced disappearance is a continuous crime to which amnesties and immunities cannot be applied.

19. Turkey applies a statute of limitations of 20 years for crimes under which enforced disappearances are usually investigated and prosecuted, that is to say, murder, torture, or arbitrary deprivation of liberty. With respect to the application of the statute of limitations, it is stated in the Declaration that, when the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established (art. 17 (2) of the Declaration). Where they exist, statutes of limitations shall be substantial and commensurate with the extreme seriousness of the offence (art. 17 (3)), and shall be counted only starting from the moment at which light is shed on the fate or the whereabouts of the person. The Working Group notes that Turkey has recently abolished the application of the statute of limitations for the crime of torture[3] and encourages the Government to consider extending this provision to enforced disappearance once it is duly criminalized.

20. In any case, the statute of limitations cannot be applied in cases of enforced disappearance amounting to crimes against humanity.[4] However, Turkish law does not include acts of enforced disappearance in the definition of crimes against humanity. The Working Group urges the Government to include the practice of widespread or systematic enforced disappearances in the definition of crimes against humanity.

21. Another shortcoming that should swiftly be remedied is that Turkey is not party to the International Convention for the Protection of All Persons from Enforced Disappearance. The ratification of the Convention, together with recognition of the competence of the Committee on Enforced Disappearances to receive individual complaints under articles 31 and 32 of the Convention would be an important measure to address and prevent acts of enforced disappearance. As positive steps, the Working Group welcomes the modification of article 90 of the Constitution, according to which international human rights treaties ratified by Turkey prevail over national legislation in cases of conflict. It also notes that there is a right to lodge constitutional complaints in case of human rights violations, though access to this procedure seems to be limited.

[3] See CAT/C/TUR/CO/4, para. 5 (a).

[4] It is stated in art. 5 of the International Convention for the Protection of All Persons from Enforced Disappearance that: "The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law." See also A/HRC/13/31, para. 39.

V. Truth

22. The Working Group, in its general comment on the right to the truth in relation to enforced disappearances, stated that the right to the truth "means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrators" (see A/HRC/16/48, para. 39).

23. Numerous families in Turkey still do not know the truth about what happened to their loved ones as no mechanism has been created to search for the disappeared. There have been ad hoc and sporadic initiatives, such as the creation in 1997 of the rather ineffective Special Bureau to Investigate Allegations Concerning Missing Persons,[7] or the creation of a subcommission within the Human Rights Inquiry Commission of the Turkish Parliament which has investigated some cases,[8] but there has been no serious effort to comprehensively address the issue. It is urgent, also in light of the increasing age of relatives, witnesses and potential suspects, that the Government immediately adopt a comprehensive policy and a specific mechanism to search for all those who have disappeared, as was also previously recommended by the Special Rapporteur on extrajudicial, summary or arbitrary executions after his 2012 visit,[9] and to conduct investigations in compliance with the Model Protocol for a Legal Investigation of Extralegal, Arbitrary and Summary Executions (Minnesota Protocol) prior to the initiation of any criminal proceedings.

24. An immediate step to be taken promptly in the search process is to properly conduct exhumations and thoroughly investigate all identified burial sites, as already recommended by a number of international human rights bodies.[10] These sites should also be adequately preserved. The results of the few exhumations that have been carried out are unclear and the way in which they were conducted raises concerns, including in regard to the methods of excavation and the contamination of possible evidence.[11] According to information received by the Working Group during the visit, no exhumations had been conducted at burial sites since 2012.

25. The Working Group appreciates that the Council of Forensic Medicine of the Ministry of Justice has significantly increased its capacity and resources, including by establishing nine regional centres throughout the country. The Working Group hopes that this measure will serve to improve the quality of investigations in cases of enforced disappearances, including with respect to the exhumation of burial sites in which the Council of Forensic Medicine should take a more proactive role. The Working Group notes that there is the possibility of presenting forensic reports performed by institutions that are not government-affiliated, but that this is subject to a prosecutor's authorization.[12]

---

[7] See E/CN.4/1998/62/Add.2, para. 47.

[8] The Working Group appreciates the information received after the visit by the Human Rights Inquiry Commission of the Turkish Parliament as a follow-up to the meeting held during the visit on the case of Cemil Kurbayir. However, in spite of the findings of the Commission that Mr. Kurbayir was tortured and killed during interrogation while in custody following the coup d'état in 1980 ... and the identification of the police officers allegedly responsible ... the criminal investigation resulted in a decision of non-prosecution. This decision was overturned on appeal in March 2014 and therefore the investigation is still pending.

[9] See A/HRC/23/47/Add.2, para. 115.

[10] See CCPR/C/TUR/CO/3, para. 11, and A/HRC/23/47/Add.2, paras. 54-57.

[11] See A/HRC/23/47/Add.2, paras. 97 and 115.

[12] On this issue, see also HRC/23/47/Add.2, para. 119.

26. The Working Group also emphasizes that access to archives is essential in order to secure the rights to truth and to justice. Turkey should develop a comprehensive plan for a system to preserve all existing records and documentation relating to human rights violations, including enforced disappearances. Access to archives, including those of military, the gendarmerie and the security and intelligence services should be guaranteed — notably to families for the purpose of the search for their loved ones, as well as to judicial authorities for the purpose of criminal investigation and prosecution.

27. The Working Group is aware that the passage of time means that, in many cases, the obligation to guarantee the truth may not result in the identification of every one of the victims individually. As the Working Group states in its general comment on the right to the truth in relation to enforced disappearances: "There is an absolute obligation to take all the necessary steps to find the person, but there is no absolute obligation of result. Indeed, in certain cases, clarification is difficult or impossible to attain, for instance when the body, for various reasons, cannot be found. A person may have been summarily executed, but the remains cannot be found because the person who buried the body is no longer alive, and nobody else has information on the person's fate. The State still has an obligation to investigate until it can determine by presumption the fate or whereabouts of the person." Thus, for disappearances that occurred decades ago, more efforts are needed in order to develop additional measures to duly investigate these cases and overcome challenges related to the passing of time, such as the scarcity of witnesses and of physical evidence.

28. In connection with the right to truth, the Working Group welcomes the information that the excavation teams of the Committee on Missing Persons in Cyprus[16] will have access to all 30 currently known suspected burial sites in military areas in the north of Cyprus.[17] This access is given over a three-year period, starting in January 2016, with 10 sites to be excavated each year.[18]

[16] The Committee on Missing Persons in Cyprus is a bicommunal body established in 1981 by the leaders of the Greek Cypriot and Turkish Cypriot communities with the participation of the United Nations. Following the establishment of an agreed list of missing persons, the Committee's objective is to recover, identify, and return to their families, the remains of 2,001 persons (493 Turkish Cypriots and 1,508 Greek Cypriots) who went missing during the intercommunal fighting of 1963 and 1964 and the events of 1974. For more information, see www.cmp-cyprus.org/about-the-cmp.

[17] In a Grand Chamber judgment delivered at Strasbourg on 10 May 2001 in the case of *Cyprus v. Turkey* (application No. 25781/94), the European Court of Human Rights found Turkey in violation of article 2 (right to life) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) concerning the failure of the authorities to conduct an effective investigation into the whereabouts and fate of Greek Cypriot missing persons who had disappeared in life-threatening circumstances, and of a continuing violation of article 5 (right to liberty and security) of the Convention concerning the failure of the Turkish authorities to conduct an effective investigation into the whereabouts and fate of the Greek Cypriot missing persons in respect of whom there was an arguable claim of them being in Turkish custody at the time of their disappearance. In 2014, the Grand Chamber of the Court issued its judgment on just satisfaction in relation to this case, ordering the payment by Turkey of €30 million in respect of non-pecuniary damage suffered by relatives of the missing persons. See the Grand Chamber judgment on the question of just satisfaction in the *Cyprus v. Turkey* case, application (application No. 25781/94), 12 May 2014. See also the Grand Chamber judgment in the case of *Varnava and Others v. Turkey*, 18 September 2009 (applications Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90), and CAT/C/TUR/CO/4, para. 21.

[18] See www.cmp-cyprus.org/press-releases/breakthrough-turkey-grants-access-to-30-.

VI. Justice

29. The Declaration on the Protection of All Persons from Enforced Disappearance requires that the State guarantee to victims effective remedies that include a thorough and impartial ex officio criminal investigation with a view to identifying those allegedly responsible for the disappearance, and imposition of the appropriate criminal penalties.

30. According to information received during the visit, investigation into a number of criminal cases involving an element of enforced disappearance has not yet been initiated or is still ongoing, despite the fact that in some cases more than 20 years have passed since the disappearances occurred. It is self-evident that finding evidence or any useful element for the investigation at this stage is quite difficult. The Working Group has received information that criminal investigations have been opened in 14 cases concerning the enforced disappearances of about 80 persons. Seven of these cases, concerning the disappearance of 34 people, reportedly resulted in acquittals; five of them, concerning the disappearance of 47 individuals, are pending, while only two cases, concerning two individuals, resulted in a decision of conviction. There are various reasons for the almost complete lack of criminal responsibility for acts of enforced disappearance.

31. First of all, given the absence of legislation making enforced disappearance an autonomous crime, acts of enforced disappearance are investigated and prosecuted under other crimes, such as murder, torture or arbitrary deprivation of liberty. This is a problem in terms of the specific investigation that is needed starting from the very first moments of the commission of the crime in order to properly investigate the enforced disappearance. In addition, and most importantly, criminal investigations and judicial proceedings are focused on offences defined as autonomous crimes in Turkish law, rather than on enforced disappearances, which are treated as aspects of those crimes. When strict legal standards of proof in cases of crimes such as murder or torture are not met, persons accused of — inter alia — committing enforced disappearances are acquitted or the cases are terminated.

32. Another consequence of the lack of an autonomous criminal offence of enforced disappearance is that, being prosecuted as elements of other crimes, acts of enforced disappearance are subject to the statute of limitations applicable to those crimes. The Working Group has been informed of a number of cases involving enforced disappearance which have been discontinued due to the expiration of the statute of limitations applicable to the crime under which the prosecution was launched.

33. During the visit, the Working Group heard a number of times about the passivity of the investigating and prosecuting authorities. This may result in situations where it appears as if it would be up to the relatives of disappeared persons to provide evidence to substantiate their loved ones' cases, rather than it being collected via a detailed and thorough investigation by the authorities. The Working Group also emphasizes that the delays in starting, conducting or concluding timely investigations do not exonerate State authorities from making the necessary efforts to comply with the obligation to secure the right to justice.

34. Indeed, the Working Group has perceived a palpable lack of interest in seriously investigating, prosecuting and adjudicating these cases, as if going forward with them would harm the interests of the State which should be instead preserved. In this respect, the Working Group considers the observations of the Special Rapporteur on the independence of judges and lawyers, after her visit to Turkey in 2011, to be quite illustrative and pertinent: "The impression gathered by the Special Rapporteur ... is that a State-centred mentality is rather prevalent in the Turkish judiciary, as the approach is often to favour or protect in the trial what are perceived to be the interests of the State. This situation, which is especially true in cases where the security of the State is felt to be at stake, may actually be

a danger (albeit very difficult to quantify or assess), notably in cases where the interests of the State and the rights of individuals may be considered to be conflicting. In this respect, a distinction must be drawn in order to avoid confusion between public and State interests; that is, the exercise of public interest functions, such as criminal prosecution, should not be conceived as having the role to protect the interests of the Government, a political party or any other State institution."[7]

35. Another challenge to achieving accountability is that a number of cases relating to enforced disappearances have been transferred, allegedly for security reasons, to courts that are geographically distant from locations where enforced disappearances have occurred and where the relatives of disappeared persons live. This dubious practice not only has obvious consequences on the effectiveness and the timely unfolding of the proceedings, but also hampers the participation of families and lawyers in the trials, thus de facto limiting access to justice, especially as there is no system in place to reimburse families who need to travel long distances to attend transferred trials.

36. The combination of all these factors makes convictions for acts of enforced disappearance virtually impossible and results in de facto immunity from criminal responsibility for perpetrators of crimes of enforced disappearance. The recent acquittals in a number of emblematic cases exemplify this pattern of impunity."[8]

37. The Working Group reiterated on many occasions that impunity for acts of enforced disappearance may be a source of future violations. The State should take decisive actions in this regard to ensure a fair, impartial and effective judicial process. The success of the country's judicial efforts will depend on strong determination to come to terms with the past, as well as a change of mindset in many State institutions, including among prosecutors and judges, whose impartiality and independence have often been questioned in relation to the lack of criminal responsibility for flagrant past human rights violations.

---

[7] See A/HRC/20/19/Add.3, para. 56.

[8] On 21 May 2014, General Musa Çitil, who had been charged with the crime of "murdering more than one person due to the same reason" and was held responsible for the extrajudicial murder and forcible disappearance of 13 civilians and faced 13 consecutive life sentences without the possibility of parole, was finally acquitted. The case had been transferred to Çorum, a city in the middle of Anatolia, and the Çorum Second High Criminal Court rendered its decision of acquittal on the grounds that there was no tangible evidence beyond reasonable doubt to prove the alleged offences. Furthermore, General Çitil was promoted and was appointed Regional Commander of the Gendarmerie in Diyarbakır.

In November 2015, Colonel Cemal Temizöz, who had previously been indicted in relation to the enforced disappearance and extrajudicial execution of 21 persons between 1993 and 1995 and had been accused of "establishing an organization to commit crimes", "being a member of this organization", "incitement to murder" and "murder", was finally acquitted, six years after the first indictment in which he faced nine life sentences. Mr. Temizöz was cleared together with seven other defendants, including the former mayor of Cizre. The crimes of which the defendants were accused were believed to have been committed by the Gendarmerie Intelligence and Anti-Terror Unit (JITEM), an organization suspected of being responsible for many extrajudicial killings and enforced disappearances in Turkey. This case was also transferred, to a city in western Turkey, Eskişehir, far from the relatives of the victims. In January 2012, the Commissioner for Human Rights of the Council of Europe described the trial as "a unique opportunity to shed light on a period of systematic human rights abuses in south-east Turkey, which feature prominently in the case law of the European Court of Human Rights".

On 3 July 2015, General Mete Sayar, who had been charged with the crime of "murdering multiple persons", which included the enforced disappearance of six villagers in 1993, and who faced life imprisonment, was finally acquitted. His case had been transferred to Ankara, where the Ninth High Criminal Court issued an acquittal on the grounds that there was no tangible evidence beyond reasonable doubt to prove the alleged offences.

38. The Working Group notes with appreciation that a special interministerial unit/team has been created to follow up on the judgments made by the European Court of Human Rights. In this respect, the Working Group was informed by the authorities that the cases in which the European Court of Human Rights had found Turkey in violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), notably on lack of effective investigation — including those relating to enforced disappearances that ended in an acquittal — could be reopened in accordance with the Code of Criminal Procedure. This is an important step, especially taking into account the fact that the European Court of Human Rights has found Turkey in violation of the European Convention on Human Rights in 51 applications concerning 102 individuals reportedly forcibly disappeared. Unfortunately, the Working Group has been informed that in some cases, investigations, following decisions by the European Court of Human Rights, have not been relaunched. The Working Group looks forward to seeing the results of the new investigations and trials.

39. The situation of lawyers, including those working on cases of enforced disappearance, is particularly worrisome. The Working Group received information about the arrest, detention and prosecution on terrorism-related charges of lawyers defending individuals accused of terrorism-related crimes, mostly on the grounds of an alleged link to, or the provision of support for, their clients' alleged criminal activities.[7] This is inadmissible in a democratic society governed by the rule of law and is particularly concerning in the light of the increasingly broader and more vague definition of terrorism and of "illegal organizations".

40. The Working Group also received information on threats and intimidation against human rights defenders and lawyers working on enforced disappearance cases, sometimes even during hearings in courts.

41. The Working Group recalls that, in accordance with articles 13 (3) and (5) of the Declaration, all involved in the investigation of cases of enforced disappearance shall be protected against ill-treatment, intimidation or reprisal, and steps shall be taken to ensure that any such act on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

VII. Reparations and memory

42. All victims of enforced disappearance and their relatives have the right to full reparation, which includes compensation, satisfaction, restitution, rehabilitation and guarantees of non-repetition, as provided for in article 19 of the Declaration.

43. The Working Group recalls that, in a case of enforced disappearance, the victim is not only the person who disappears, but also any other person, in particular the next of kin, who suffers harm as a consequence of the disappearance. Relatives endure pain and anguish as a consequence of the continuous uncertainty about the fate and whereabouts of their loved ones.

44. The Working Group also underlines that the obligation to provide redress to victims of enforced disappearance is not limited to the right to monetary compensation; it also includes, inter alia, medical and psychological care and rehabilitation for any form of physical or mental damage, as well as legal and social rehabilitation, guarantees of non-

[7] On this matter, see also A/HRC/20/19/Add.3, para. 65.

repetition, restoration of personal liberty and similar forms of restitution, satisfaction and reparation that may remove the consequences of the enforced disappearance.[37]

45. The Working Group notes that the frequent stigmatization of relatives of the disappeared as terrorists or terrorists' supporters rather than as victims is a matter of concern and goes in the opposite direction to that required for their full rehabilitation and recovery.

46. Within the scope of the right to reparation in the case of enforced disappearance, the family of the disappeared person has an imprescriptible right to be informed of the fate and/or whereabouts of the disappeared person and, in the event of decease, that person's body must be returned to the family as soon as it has been identified, regardless of whether the perpetrators have been identified or prosecuted.

47. The Working Group received little information on reparation programmes for relatives of the disappeared, most likely because such programmes do not seem to exist. During some official meetings, the Working Group was informed that only victims of terrorism receive compensation from the State. In practice, reparation is linked to the positive outcome of a related judicial case: there is no other form of reparation outside the context of a judicial proceeding.

48. The Working Group was also informed that there is a compensation committee within the Ministry of Justice which grants compensation awarded by the European Court of Human Rights for cases in which the Court has found Turkey to be in violation of the European Convention on Human Rights.

49. The Working Group's experience during its country visits has frequently been that measures intended to help relatives cope with the consequences of the absence of the disappeared person are often assimilated to measures of reparation. However, measures that provide for social assistance should be independent and should not prejudice the obligation of the State to provide reparation to victims as a consequence of the violation of their rights. In addition, social allowances and/or measures of reparation should not be made conditional on the requirement that the relatives of the disappeared person produce a death certificate. Instead, a declaration of absence should be issued after an enforced disappearance when there is no proof of the death of the disappeared person, in order to support relatives while at the same time allowing them to continue searching for their loved one.[38] In its general comment on article 19 of the Declaration, the Working Group made it clear that, in principle, no victim of enforced disappearance shall be presumed dead over the objections of the family.[39]

50. The Working Group recommends that any policy adopted in the area of reparation, truth and justice take a gender perspective. In Turkey, as in most of the countries where enforced disappearances have occurred, women are often those who are left behind and suffer the most from the economic and social consequences of the enforced disappearances of their loved ones. The Working Group recommends in this regard that the Government follow the standards developed in its general comment on women affected by enforced disappearances (A/HRC/WGEID/98/2).

51. In the light of political reluctance to come to terms with past enforced disappearances, it is not unexpected to note the absence of official memorial sites or remembrance places in Turkey. There is no place for the relatives to gather to remember their loved ones. The Working Group has also been informed of instances of harassment

[37] See A/HRC/22/45, para. 53.
[38] See A/HRC/22/45, para. 50.
[39] See E/CN.4/1998/43, para. 74.

during demonstrations of families of the disappeared. The Working Group stresses the importance of State-sponsored memorials and of the support of the State for civil society remembrance initiatives. The establishment of memorial sites and monuments contributes to collective social recognition of the violations that have occurred, as well as to the rejection and repudiation of these violations, which could also serve as a preventive measure. The establishment and maintenance of memorial sites should be a responsibility of the State, with the close participation of the relatives of the disappeared and other parties concerned.[47]

VIII. Prevention of enforced disappearances

Awareness-raising and human rights education

52. In order to prevent recurrence of enforced disappearances, it is essential to properly educate generations to come about the past and to provide society in general, and civil servants in particular, including migration officials, with adequate training in human rights. The Working Group emphasizes the importance of including the necessary education and information regarding the relevant provisions of the Declaration in the training given to law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty. Training for judges, prosecutors and lawyers is equally important.

Respect of procedural safeguards

53. As a preventive measure, articles 10 to 12 of the Declaration require that deprivation of liberty must be carried out in strict compliance with national and international human rights standards. In this respect, the Working Group is concerned at a number of provisions contained in several pieces of Turkish legislation, notably as a consequence of two major "package" laws passed by Parliament in March 2015 containing provisions that tighten the Government's control over national and public security in the country.

54. Certainly problematic are the provisions contained in Law No. 6638,[48] which contains the Law on Amending the Police Powers and Duties Law, the Law on the Gendarmerie's Organization, Duties and Powers, and other laws. Law No. 6638 amends more than a dozen laws, with the longest sections being amendments to articles 21-33 of the Police Organization Law and to articles 34-46 of the Police Higher Education Law. The amendments in the first 20 articles of Law No. 6638 affect the Police Powers and Duties Law, the Law on the Gendarmerie's Organization, Duties and Powers, the Law on Meetings and Demonstrations, the Anti-Terror Law, the Criminal Code, the Code of Criminal Procedure, the Provincial Administration Law, the Compensation for Terrorism Law and the Identification Notification Law. These amendments enhance the power of the police to conduct searches, notably giving the police the authority to detain persons for 24 hours without a warrant for crimes involving force and violence committed during public events — that is, for some ten types of offences listed in the Criminal Code, crimes listed in the Anti-Terror Law, and certain offences listed in the Law on Meetings and Demonstrations, among others. The new provisions also empower governors to assume some of the authority of prosecutors, for example to authorize the police to find the

[47] See A/HRC/22/45, para. 64.

[48] See www.loc.gov/law/help/national-security-law-turkey.php.

perpetrators of crimes. If the crime is "collective" — for example, involving mass demonstrations — police officers may hold persons in custody for up to 48 hours without the authorization of a judicial authority.[27] The Working Group considers that this is too long a period without a warrant and recalls that the first hours and days after the deprivation of liberty are when abuses usually occur, including enforced or involuntary disappearances.

Non-refoulement of refugees

55. It is stated in article 8 (1) of the Declaration states that "no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance". In this respect, the Working Group expresses serious concern about the information received of a high number of mass returns of Syrian refugees from Turkey, notably since January 2016, and about the allegation of the use of violence by border guards, including the use of live ammunition, to prevent Syrian nationals, including children, from entering Turkey from the Syrian Arab Republic. Both the Committee against Torture and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families have recently expressed concern about these issues when considering the respect by Turkey of its obligations under the respective conventions.[28]

56. The Working Group emphasizes that it is specified in the Declaration that, for the purpose of determining whether there are grounds to believe that, if returned, a person may be in danger of enforced disappearance, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. It appears palpable that, as very widely documented,[29] the situation in the Syrian Arab Republic facilitates the occurrence of enforced disappearance and exposes the refugees returned there to a great risk. In this connection, the Working Group urges the Turkish authorities to comply with the provisions of the Declaration and of other applicable human rights norms and standards.

Human Rights and Equality Institution

57. The Working Group is concerned by the recent legislative reform, on 6 April 2016, paving the way for changes to the national human rights institution in Turkey — the Human Rights and Equality Institution — which will encompass the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and an equality commission. According to the information received, the institution will hardly comply with international standards, particularly the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), with eight of its board members being appointed by the Council of Ministers and three being appointed by the President.[30] The Chair and the Deputy Chair will be elected by the board from among its members. The Working Group is concerned that the accessibility of the institution will be limited by the absence of local or regional offices. Finally, concerns have been expressed about lack of

[27] See art. 13 of Law No. 6638.

[28] See CAT/C/TUR/CO/4, para. 23, and CMW/C/TUR/CO/1, paras. 41 (b), 53 and 54. See also www.amnesty.org/en/latest/news/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/.

[29] See, for instance, A/HRC/24/46, paras. 67-74.

[30] See also CAT/C/TUR/CO/4, paras. 27 and 28.

clarity of mandates and the resulting overlapping of functions of institutions active in the field of human rights, namely those of the Human Rights and Equality Institution, the Ombudsman and the Parliamentary Inquiry Committee. The Working Group regrets that it could not meet with representatives of the institution. It expects, however, that the issues related to past enforced disappearances will feature prominently in its agenda.

IX. Conclusions

58. **Turkey needs to come to terms with past disappearances, and it needs to do so in a comprehensive manner, fully addressing them. This should be the result of a clear State policy recognizing what happened and proposing a systemic solution with regard to all aspects related to enforced disappearances, namely truth, justice, reparation, memory and guarantees of non-repetition. Enforced disappearance cannot be considered as an issue of the past. It is a continuous crime until the fate and the whereabouts of every disappeared person is clarified.**

59. **Important challenges remain to comprehensively addressing past enforced disappearances and preventing their recurrence in the future: enforced disappearance has not yet been introduced in the legislation as an autonomous crime, there are virtually no cases of criminal responsibility, the fate and the whereabouts of many disappeared persons is still unknown, and many of the burial sites have not yet been investigated.**

60. **Given the lack of progress on any aspect related to past disappearances, the full recognition of the past violations and the creation of an extrajudicial mechanism specifically dedicated to fully investigating the fate and the whereabouts of those who disappeared during the 1980s and 1990s has become essential and urgent, in order to finally provide truth, justice and reparation to the families.**

61. **The Working Group is concerned at the current situation in the south-east of the country, where a wide security operation has been in place since July 2015. Although during the visit the Working Group did not receive allegations of recent enforced disappearances,[6] its experience unfortunately suggests that situations such as the current one in the south-east are conducive to human rights violations, including enforced disappearances. Only a thorough, independent and credible investigation may clarify facts and dispel any doubts as to the nature and extent of the violations occurring on the ground.**

62. **The Working Group firmly believes that in the current environment it is even more important to come to terms with past violations, as reluctance to do so could actually become the source of further violations both in the present-day environment and in the future.**

63. **The Working Group reiterates its willingness to continue its constructive dialogue with the Turkish authorities and offers its unreserved support for the full implementation of the Declaration on the Protection of All Persons from Enforced Disappearance.**

X. Recommendations

64. **In the light of the above, the Working Group formulates the following recommendations for the Government of Turkey:**

General

65. **Recognize the enforced disappearances of the past and adopt a comprehensive policy to fully address them in all relevant areas in order to guarantee the victims' rights to truth, justice, reparation and guarantees of non-recurrence, through both a strengthened judicial system and a newly created extrajudicial mechanism.**

66. **Undertake a thorough and impartial investigation into all allegations of human rights violations in the context of the current security operations in the south-east, including of families not being able to have access to the bodies of their killed loved ones and of bodies being disposed of.**

67. **Thoroughly and independently investigate allegations of disappearances of migrants in, or transiting through, Turkey, including reports of women and children disappearing in trafficking networks when being trafficked from the Syrian Arab Republic to Turkey.**

Legislation

68. **Swiftly make enforced disappearance an autonomous offence punishable by appropriate penalties that reflect its extreme seriousness. The offence should also cover the various modes of criminal liability, including committing, ordering, soliciting or inducing the commission of, attempting to commit, being an accomplice to, and participating in, an enforced disappearance. It should also expressly provide for the application of command responsibility or superior individual criminal responsibility for such crime, and contain the explicit provision that enforced disappearance is a continuous crime to which amnesties and immunities cannot be applied. Furthermore, it should include the practice of widespread or systematic enforced disappearances in the definition of crimes against humanity to which the statute of limitations does not apply.**

69. **Adopt without delay comprehensive legislation on enforced disappearances, which should provide, inter alia, for:**

(a) **A specific procedure for filing complaints with regard to enforced disappearances;**

(b) **A mechanism for investigation and verification of reported cases of enforced disappearance;**

(c) **A national register of forcibly disappeared persons, and of reported and discovered burial sites;**

(d) **Full access to the above-mentioned register for relatives, lawyers, human rights defenders and any other concerned person;**

(e) **Introduction of the declaration of absence following the enforced disappearance, making certain that the issuance of certificates of absence will not terminate the rights of victims' families to pursue truth and justice and will cover all disappearances regardless of the time of their occurrence;**

(f) **Full protection and support for the relatives of disappeared persons and witnesses;**

(g) **The right to full reparation, including compensation.**

70. **Ratify the International Convention for the Protection of All Persons from Enforced Disappearance without delay and without reservations and recognize the competence of the Committee on Enforced Disappearances in accordance with articles 31 and 32 of the Convention.**

Truth

71. **Adopt immediately a comprehensive policy to address disappearances, which would include the creation of an extrajudicial mechanism specifically devoted to searching for those who have disappeared. This body should be composed of independent and professional personnel and should be set up through a comprehensive consultative process with all the stakeholders involved. It should also be granted dedicated and sufficient human and financial resources as well as ample powers to accept and review complaints from relatives and to properly investigate and make recommendations for possible criminal prosecutions. Furthermore, it should be equipped with the technical capacity to conduct exhumations, including forensic expertise.**

72. **Ensure the proper investigation of existing burial sites, the proper preservation of the sites and the protection of the samples' chain of custody.**

73. **Be proactive in the proper investigation of existing burial sites and in the identification of new ones.**

74. **Examine without undue delay all locations of potential mass graves and establish a mapping of all burial sites.**

75. **Establish a register with the exact or approximate number of disappeared persons.**

76. **Create a national DNA bank to which families can send samples.**

77. **Immediately open archives, including military archives, that are relevant to cases of enforced disappearance, in order to facilitate the finding of undiscovered gravesites and speed up the search for missing persons.**

78. **Promulgate a law on access to information and a proper legislative framework on archives, so as to guarantee full access to all information that could potentially lead to clarification when investigating cases of disappeared persons.**

79. **Continue cooperating with the humanitarian mandate of the Committee on Missing Persons in Cyprus and activate the process of access to burial sites to support the families affected through return to them of the remains of their missing relatives.**

Justice

80. **Guarantee that criminal investigations into enforced disappearances are carried out from the beginning by highly professional and independent teams of prosecutors, investigators and forensic experts.**

81. **Equip investigative teams and courts with the necessary means and resources to handle cases of enforced disappearance.**

82. **Prosecute all cases of enforced disappearance, regardless of the perpetrator and of the time when they were committed.**

83. Investigate the perpetrators and instigators of such crimes, as well as those hierarchically accountable under the principle of command responsibility.

84. Take appropriate measures to fully ensure the protection of relatives and witnesses throughout the proceedings, including by fostering conditions and providing incentives to encourage more witnesses to furnish crucial information.

85. Reconsider the practice of transferring trials to geographically distant courts, in order to maximize effectiveness, reduce delays and improve access to justice for families.

86. Guarantee access to justice for relatives when the cases of their loved ones are moved to geographically distant courts, including by considering reimbursing expenses incurred for attending the hearings.

87. Take measures to tackle intimidation and harassment of relatives, human rights defenders and lawyers working on cases of enforced disappearance, including punishing those responsible for such acts, in accordance with articles 13 (3) and (5) of the Declaration.

88. Ensure that lawyers are not subject to criminal or any other sanctions for the mere fact of defending clients accused of terrorism-related crimes.

Reparations and memory

89. Urgently develop a national reparation programme that includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition for all victims of human rights violations, including enforced disappearance, without discrimination. Social and psychological support for victims should be a key component of this national reparation programme.

90. Establish a system for providing for social allowances or appropriate social and medical measures for relatives of disappeared persons in relation to the physical, mental and economic consequences of the absence of the disappeared.

91. Take a gender perspective in all policies in the area of reparation, truth and justice, following the standards developed by the Working Group in its general comment on women affected by enforced disappearances (A/HRC/WGEID/98/2).

92. Sponsor memorials as well as support civil society remembrance initiatives, including their proper maintenance through public funds.

93. The design of such monuments and the planning and conducting of commemoration events should be carried out in consultation with victims' families and other stakeholders.

Awareness-raising and other preventive measures

94. Include the relevant provisions of the Declaration in the training given to military personnel and the police and to medical personnel, public officials, migration officials and other persons who may be involved in the custody or treatment of any person deprived of liberty.

95. Guarantee to all persons deprived of their liberty the rights recognized in the Declaration and in other relevant international instruments.

96. **Abolish the provisions giving the police under certain circumstances the authority to detain persons for up to 48 hours without the authorization of a judicial authority.**

97. **Ensure strict adherence by the relevant authorities to the applicable procedures for extradition, return and expulsion, and in particular, guarantee evaluation on a case-by-case basis in order to establish whether there are grounds for believing that the person could be subjected to enforced disappearance.**

98. **Fully comply in this respect with article 8 (1) of the Declaration, in which it is specified that "no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance".**

National human rights institution

99. **Ensure the independence and impartiality, both formal and substantial, of the forthcoming national human rights institution, in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The national human rights institution should have competence to monitor and address issues related to enforced or involuntary disappearances.**

100. **Ensure transparency and consultation with civil society in the activities of the newly established national human rights institutions.**

101. **Facilitate access for victims to the national human rights institution by creating regional and local offices.**

102. **The Working Group invites the Government of Turkey to submit, within 90 days of the date of presentation of the present report to the Human Rights Council, a timetable showing the steps that it will take to implement the recommendations of the Working Group.**